

# STATE OF SOUTH DAKOTA



## **CODIFIED LAWS Chapter 36-18A Last Revision of 7/1/09 ADMINISTRATIVE RULES Article 20:38 Last Revision 1/16/12**

Covering selected provisions of law dealing with  
Professional Engineers, Architects, Land Surveyors, Landscape Architects,  
Petroleum Release Assessors and Petroleum Release Remediators

## **SOUTH DAKOTA BOARD OF TECHNICAL PROFESSIONS**

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CODIFIED LAWS – CHAPTER 36-18A  
SOUTH DAKOTA BOARD OF TECHNICAL PROFESSIONS  
Last Revision of 7/1/09, Publish Date of 7/1/12

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**36-18A-1. Definition of terms.** Terms used in this chapter mean:

- (1) "Alteration," for the purpose of determining exemptions, any remodeling, renovation, or reconstruction to a building which changes the use, occupancy classification, or occupant load, or the exiting, structural, mechanical, or electrical systems of a building as defined by the building code;
- (2) "Architect," any person licensed in good standing and legally authorized to practice architecture in this state;
- (3) "Architectural intern," any person who has successfully completed an accredited education program in architecture acceptable to the board and is enrolled in the intern development program administered by the National Council of Architectural Registration Boards;
- (4) "Board," the Board of Technical Professions;
- (5) "Building," any structure used or intended to support or shelter any occupancy;
- (6) "Building or floor area," the sum of the areas of all of the floors of a building, including basements, mezzanine, and intermediate tiers, and penthouses of headroom height, measured from the exterior faces of exterior walls or from the center line of the wall separating buildings. The building area does not include such features as pipe trenches, exterior terraces or steps, chimneys, vent shafts, courts, and roof overhangs. The floor area of enlargements shall be added to the existing building area. A fire or area separation wall is not an exterior wall for the purposes of this definition;
- (7) "Building official," the officer or other designated authority charged with the administration and enforcement of the adopted code;
- (8) "Business entity," any corporation, partnership, limited liability corporation, limited liability partnership, or sole proprietorship that practices or offers to practice engineering, architecture, land surveying, landscape architecture, petroleum release assessment, or petroleum release remediation services to the public through its licensed personnel who are either employees, officers, directors, partners, members, managers, or owners and that have been issued a certificate of authorization by the board;
- (9) "Construction administration," the interpretation of drawings and specifications, the establishment of standards of acceptable workmanship, and the site observation of construction, by a licensed professional, for the purpose of determining whether the work is in general accordance with the construction contract documents. Shop drawing review, coordination of a construction project among the owner, architect, engineer, contractor, and subcontractors, and inspection of construction by contractors, subcontractors, owner's agents, building officials, or other unlicensed professionals does not constitute construction administration;

- (10) "Corrective action," an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a petroleum release, excluding removal of a petroleum tank of less than one thousand one hundred gallons;
- (11) "Design-build," a delivery approach in which a project team of design professionals and builders perform design and construction services under contract with a client;
- (12) "Engineer," a person who is qualified to practice engineering by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience;
- (13) "Engineering intern" or "engineer-in-training" or "EI" or "EIT", a person enrolled by the board as an engineering intern and who has successfully passed the fundamentals of engineering examination;
- (14) "Enlargement," for the purpose of determining exemptions, is any addition to a building which changes the use, occupancy classification, or occupant load, or the exiting, structural, mechanical, or electrical systems of a building as defined by the building code adopted by the board;
- (15) "Land surveyor," a person licensed in good standing and legally authorized to practice land surveying in this state;
- (16) "Land surveying intern" or "land surveyor-in-training" or "LSI" or "LSIT", a person enrolled by the board as a land surveying intern who has successfully passed the fundamentals of land surveying examination;
- (17) "Landscape architect," a person licensed in good standing and legally authorized to practice landscape architecture in this state;
- (18) "Landscape architectural intern," a person who has successfully completed an accredited education program in landscape architecture adopted by the board;
- (19) "License," a certificate indicating authority to practice and use titles within a profession;
- (20) "Licensee," a person or business entity whose license is in good standing;
- (21) "Petroleum," gasoline, alcohol-blended fuels, diesel fuels, aviation gasoline, jet fuel, fuel oil, kerosene, burner oil, naphtha, lubricating oils, motor oil, automatic transmission fluid, waste oil, or alcohols that have been denatured with gasoline and stored to be used as blended fuel-grade ethanol;
- (22) "Petroleum release assessor," a person licensed in good standing and legally authorized to practice petroleum release assessment in this state;
- (23) "Petroleum release remediator," a person licensed in good standing and legally authorized to practice petroleum release remediation in this state;
- (24) "Professional engineer," a person licensed in good standing and legally authorized to practice engineering in this state;

- (25) "Release," the spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a reportable quantity of petroleum;
- (26) "Remedial investigation," an action to identify the corrective action to be taken to protect the public health, safety, and environment and to contain a release of petroleum into the environment;
- (27) "Responsible charge," the immediate and responsible direction by a licensed professional who has exercised personal direction, guidance, and control over the design, preparation of documents, construction administration, and other professional services and has exercised professional judgment in all matters relating to those services;
- (28) "Retired licensee," a person who is retired and is no longer licensed to practice that person's profession may use the appropriate honorific title or combination of titles of Architect, Retired; Professional Engineer, Retired; Land Surveyor, Retired; or Landscape Architect, Retired;
- (29) "Site assessment," an action to identify the existence, source, nature, and extent of a release and the extent of any danger to public health, safety, and welfare of the public or environment;
- (30) "Site observation," the visual observation of a construction project for general compliance with submitted plans and specifications at significant stages and at project completion.

**36-18A-1.1. Inactive licensee defined.** For the purposes of this chapter, the term, inactive licensee, means a licensee who ceases to practice or offer to practice in the licensee's profession and who does not wish to renew but would like his or her files to be kept active for possible reinstatement. An active licensee may be granted inactive status. No inactive licensee may practice or offer to practice professional services in South Dakota unless otherwise exempted in this chapter. Any inactive licensee is exempt from the continuing education requirements.

**36-18A-2. "Practice of architecture" defined.** For the purposes of this chapter, the term, practice of architecture, means the practice or offering to practice any service in connection with the design, evaluation, construction, enlargement, or alteration of a building or group of buildings and the space within and surrounding such buildings, which have as their principal purpose human occupancy or habitation. Such service includes consultation; evaluation; planning; providing preliminary studies; designs; overall interior and exterior building design; preparation of drawings, specifications, and related documents and other technical submissions; construction administration services which include the review or observation of construction for the purpose of determining whether the work is in general accordance with the design, drawings, specifications, codes, and other technical submissions; and coordination of services furnished by the architect, licensed professional engineers, and other consultants as they relate to architectural work in connection with the design and construction of any private or public building, building project, or integral part or parts of buildings, or any addition or alteration thereto. The term also includes representation of clients in connection with the construction administration services entered into between clients and contractor and others.

**36-18A-3. "Practice of engineering," "design coordination" and "engineering studies" defined.** For the purposes of this chapter, the term, practice of engineering, means the practice or offering to practice of any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work. Such service or work includes consultation; investigation; evaluation; planning; design; and design coordination of engineering works and systems; planning the use of land and water; land-use studies; teaching of advanced engineering design subjects; performing engineering studies; and the review or observation of construction for the purpose to

determine whether the work is in general accordance with drawings, specifications, and other technical submissions. Any such service or work, either public or private, may be in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products, or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property, and including such other professional services as are necessary to the planning, progress, and completion of any engineering services.

For the purposes of this section, the term, design coordination, includes the review and coordination of those technical submissions prepared by others, including consulting engineers, architects, landscape architects, land surveyors, and other professionals working under the direction of the engineer. The term, engineering studies, includes all activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easement exhibits relating to land boundaries, and the dependent or independent surveys or resurveys of the public land survey system.

A person is construed to practice or offer to practice engineering if the person practices any branch of the profession of engineering, if the person, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or if the person through the use of some other title implies that the person is a professional engineer or that the person is licensed under these provisions, or if the person holds himself or herself out as able to perform or does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

**36-18A-4. "Practice of land surveying" defined.** For the purposes of this chapter, the term, practice of land surveying, means the practice or offering to practice professional services such as consultation, investigation, testimony evaluation, expert technical testimony, land-use studies, planning, mapping, assembling, interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, and utilization and development of these facts and interpretation into an orderly survey map, plan, report, description, or project.

The practice of land surveying includes any of the following:

- (1) Locates, relocates, establishes, reestablishes, lays out, or retraces any property line or boundary of any tract of land or any road, right-of-way, easement, alignment, or elevation of any of the fixed works embraced within the practice of land surveying;
- (2) Makes any survey for the subdivision of any tract of land;
- (3) Determines, by the use of principles of land surveying, the position for any survey monument or reference point; or sets, resets, or replaces any such monument or reference point;
- (4) Determines the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics;
- (5) Geodetic surveying which includes surveying for determination of the size and shape of the earth utilizing angular and linear measurements through spatially oriented spherical geometry;
- (6) Creates, prepares, or modifies electronic or computerized data, including land formation systems and geographic information systems, relative to the performance of the activities in subdivisions (1) to (5), inclusive, of this section.



**36-18A-5. "Practice of landscape architecture" defined – Landscape architecture for landscape preservation.** For the purposes of this chapter, the term, practice of landscape architecture, means the practice or offering to practice landscape architecture projects, including preparing preliminary studies, providing land-use studies, developing design concepts, giving expert technical testimony, planning for the relationships of physical improvements and intended uses of the site, establishing form and aesthetic elements, analyzing and providing for life safety requirements, developing those construction details on the site which are exclusive of any building or structure and do not require the seal of an engineer or architect, preparing and coordinating technical submissions, and conducting site observation of landscape architecture projects.

Landscape architecture, for the purposes of landscape preservation, development, and enhancement, includes: investigation, selection, and allocation of land and water resources for appropriate use; feasibility studies; formulation of graphic and written criteria to govern the planning and design of land construction programs; preparation, review, and analysis of master plans for land use and development; production of overall site plans, landscape grading and landscape drainage plans, irrigation plans, planting plans, and construction details; specifications; cost estimates and reports for land development; collaboration in design of roads, bridges, and structures with respect to the functional and aesthetic requirements of the areas on which they are to be placed; negotiation and arrangement for execution of land area projects; field observation and inspection of land area construction, restoration, and maintenance.

**36-18A-6. "Practice of petroleum release assessment" defined.** For the purposes of this chapter, the term, practice of petroleum release assessment, means the practice of directing or supervising the field crew performing activities related to assessments and environmental monitoring; developing assessment plans; directing the placement of soil borings and determining where to collect samples for analytical data; determining the location of representative soil samples for contaminant analysis; identifying and classifying soil types and soil conditions; preparing soil boring logs or supervising preparation of logs; testing and reporting on the physical and chemical properties of soils; identifying and reporting on geological conditions; developing and implementing groundwater evaluation activities; directing the placement of monitoring or observation wells; evaluating aquifer characteristics; formulating input data for groundwater flow models; operating groundwater models and interpreting results; directing the performance of pump tests or dye tests and other aquifer tests; interpreting the results of aquifer testing; determining capture zones for groundwater removal systems; evaluating and reporting on physical and chemical groundwater data; or offering to provide any services pursuant to this section.

**36-18A-7. "Practice of petroleum release remediation" defined.** For the purposes of this chapter, the term, practice of petroleum release remediation, means the practice of interpreting assessment results; formulating input data for contaminant models; operating contaminant models and interpreting results; identifying the potential fate of contaminants and environmental transport mechanisms; identifying the environmental risks and health hazards of contaminants and contaminated media; directing or supervising the disposal of contaminated soil and groundwater; evaluating and recommending remediation alternatives; preparing a cost estimate or cost-effective analysis for remedial alternatives; developing soil and groundwater remediation systems; preparing the plans and specifications for remedial systems; directing or supervising the installation, operation, and maintenance of remedial systems; overseeing and directing assessment and remedial activities; signing assessment plans, assessment reports, and remedial action plans; or offering to provide any of the services pursuant to this section. A petroleum release remediator may perform all the functions of a petroleum release assessor.

**36-18A-8. License required to practice professions enumerated in chapter.** Any person or business entity practicing or offering to practice architecture, engineering, land surveying, landscape architecture, or petroleum release assessment or remediation shall submit evidence of qualifications to the board and be licensed in accordance with the provisions of this chapter. No person or business entity may practice or offer to practice any of these professions, or to use in connection with that person's or business entity's name or otherwise assume, use, or advertise any title or description that may falsely convey the impression that the person is duly licensed under the provisions of this chapter unless the person is so licensed.

**36-18A-9. Certain persons exempt from provisions of chapter.** This chapter does not apply to:

- (1) Any person engaged in military engineering while rendering service exclusively for any of the armed forces of the United States or this state;
- (2) Any person engaged in the practice of professional engineer or architecture in the employ of the United States government but only while exclusively engaged as a United States government employee on such government project or projects which lie within federally-owned land;
- (3) Any person engaged in the practice of professional engineering, architecture, landscape architecture, or land surveying in the employ of the state and any of its political subdivisions but only while rendering service exclusively to such employer. Any building project resulting from the practice of professional engineering, architecture, landscape architecture, or land surveying under this subdivision is subject to the size limitation imposed under the exemptions in subdivision (8) of this section;
- (4) Any employee who prepares technical submissions or administers construction contracts for a person or organization lawfully engaged in the practice of engineering, architecture, or land surveying, if the employee is under the direct supervision of a registered professional engineer, architect, or land surveyor;
- (5) Any full-time employee of a corporation, partnership, firm, business entity, or public utility while exclusively doing work for the corporation, partnership, firm, business entity, or public utility, if the work performed is in connection with the property, products, and services utilized by the employer and not for any corporation, partnership, firm, or business entity practicing or offering to practice architectural, engineering, or land surveying services to the public. The provisions of this subdivision do not apply to any building or structure if the primary use is occupancy by the public;
- (6) Any person engaged in the preparation of plans and specifications for the erection, enlargement, or alteration of any of the following buildings:
  - (a) Any dwelling for a single family, and any outbuilding in connection therewith, such as a barn or private garage;
  - (b) Any two, three, or four family dwelling
  - (c) Any five to sixteen family dwelling, inclusive, located in a governmental subdivision of this state which provides a detailed building code review of building projects by a building inspection department which is a Class A member of the International Conference of Building Officials;

- (d) Any farm or ranch building or accessory thereto except any building regularly used for public purposes;
  - (e) Any temporary building or shed used exclusively for construction purposes, not exceeding two stories in height, and not used for living quarters;
- (7) Any person who prepares detailed or shop plans required to be furnished by a contractor to a registered professional engineer or architect, and any construction superintendent supervising the execution of work designed by an architect or professional engineer registered in accordance with this chapter;
- (8) Any person engaged in the preparation of plans and specifications for the new construction, the enlargement or the alteration of any of the following buildings:
- (a) Any building occupied as a hospital, hotel, motel, restaurant, library, medical office, nursing facility, assisted living facility, jail, retirement home, or mortuary, if the gross square footage of the new construction, the enlargement, or the alteration is four thousand square feet or less;
  - (b) Any building occupied as an auditorium, church, school, or theater if the gross square footage of the new construction, the enlargement, or the alteration is five thousand square feet or less;
  - (c) Any building occupied as a bowling alley, office, shopping center, bank, fire station, service station, or store if the gross square footage of the new construction, the enlargement, or the alteration is seven thousand square feet or less;
  - (d) Any building occupied as an industrial plant or public garage if the gross square footage of the new construction, the enlargement, or the alteration is eleven thousand square feet or less;
  - (e) Any building occupied as a warehouse if the gross square footage of the new construction, the enlargement, or the alteration is twenty thousand square feet or less;
  - (f) Any building with an occupancy other than those listed in subsection (a) to (e), inclusive, of this subdivision if the gross square footage of the new construction, the enlargement, or the alteration is four thousand square feet or less;
  - (g) Any pre-engineered or predesigned building, or any pre-engineered or predesigned building with a predesigned system, designed for the intended use of that building, including building structure, electrical, plumbing, and mechanical systems, if the buildings and systems are supplied directly, or indirectly, by a company engaged in the business of designing and supply such buildings and systems and if the company has in its employ one or more engineers or architects licensed in South Dakota, who prepare all designs for such buildings and systems. No person exempted may use the title of professional engineer, architect, or land surveyor, or any other word, words, letters, or signs in connection with the person's name that may falsely convey the impression that the person is a licensed professional engineer, architect, or land surveyor.

**36-18A-10. Building consisting of more than one type of occupancy – Limitations for each type.**

For the purposes of § 36-18A-9(8) of this chapter, if a building consists of more than one type of occupancy, each portion of the building shall conform to the limitations established by that subdivision for each type of occupancy. The area of the building shall be such that the sum of the ratios of the actual area for each separate occupancy divided by the total allowable area allowed by that subdivision for each separate occupancy does not exceed one.

**36-18A-11. Design-build services by contractor.** This chapter does not prohibit a contractor from offering to provide or from providing design-build services if the architectural and engineering services offered or provided in connection with the design-build services are rendered by an architect or professional engineer licensed in accordance with this chapter.

**36-18A-12. Certain services performed by authorized petroleum release business exempt.** This chapter does not apply to providers of services such as drilling or monitoring well installation, analytical testing, monitoring, electrical, plumbing, excavation, or construction if the service provided is part of a site assessment, remedial investigation, or corrective action to remediate water or soil contaminated from a petroleum release performed or executed by an authorized petroleum release business entity with a certificate of authorization.

**36-18A-13. Incidental cross-practice by architects and engineers.** An architect may engage in the practice of professional engineering, or a professional engineer may engage in the practice of architecture, but only to the extent that such practice is incidental or of minor importance to a project or service being legally performed under this chapter.

**36-18A-14. Board of Technical Professions created – Certificate of appointment – Oath of office – Number and terms of members – Composition.** The Board of Technical Professions is created to administer the provisions of this chapter. Each member of the board shall receive a certificate of appointment from the Governor, and shall file with the secretary of state a written oath for the faithful discharge of the member's official duties. The board shall consist of seven members to be appointed by the Governor for a term of three years. No member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose. The board shall be composed of two professional engineers, two architects, two land surveyors, and one member from the public. The Governor may stagger the terms to enable the board to have different terms expire each year. Any member appointed to the board prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-year term.

**36-18A-15. Board member qualifications.** Each member of the board shall be a citizen of the United States, a resident of this state, and in good standing with the board. Any member of the board whose individual license is revoked or suspended automatically ceases to be a member of the board. The public member may not be or have been engaged in any activity subject to licensure under this chapter. The members may not all be of the same political party.

**36-18A-16. Immunity of board members – Attorney general to represent board.** The members of the board, or any committee of the board, and the executive director of the board are immune from liability in damages, and no cause of action for damages may arise against them for any act or proceeding undertaken or performed by them within their official capacity if they acted in good faith. These persons, while acting upon disciplinary matters and in carrying out civil remedies, are deemed to be acting as officers of the state. The attorney general shall represent and appear for them in any action or proceeding brought by or against them because of such acts.

**36-18A-17. Removal of board member – Filling of vacancies.** The Governor may remove any member of the board for misconduct, incapacity, or neglect of duty. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve for only the unexpired portion of the term.

**36-18A-18. Board to elect officers – Meetings – Quorum – Inclusion in blanket bond.** The board shall annually elect from its members a chair, a vice chair, and a secretary. The board shall hold at least six regular meetings in each year. Special meetings may be called and notice of all meetings shall be given in such manner as the public meetings laws may provide. At all meetings, a majority of the board constitutes a quorum. The board and its employees may be included in the state blanket bond purchased pursuant to § 3-5-5.1.

**36-18A-19. Accounting for moneys received – Disbursement of funds – Vouchers and warrants.** The executive director of the board shall receive and account for all money derived under the provisions of this chapter. All money shall be used by the board to administer the duties set forth under this chapter. The board may determine the manner of disbursing the money and purposes for which disbursements shall be made. Warrants for the payment of disbursements shall be issued by the state auditor and paid by the state treasurer upon presentation of itemized vouchers approved by the board. The total of the warrants may not exceed the total balance.

**36-18A-20. Employment of counsel and assistance in enforcement.** The board may employ counsel and other necessary assistance to aid in the enforcement of this chapter or for the assistance of any proceeding commenced by the attorney general or by a state's attorney, the compensation and expenses of whom shall be paid from the technical professions fund.

**36-18A-21. Employment of executive director and staff – Offices.** The board shall employ an executive director who shall work under the direction of the board and shall be delegated the duties necessary to conduct board business. The board may employ staff and rent offices as necessary for the proper performance of its duties as prescribed in this chapter. The compensation and expenses shall be paid from the technical professions fund.

**36-18A-22. Board to promulgate rules – Scope of rules – Existing rules remain in effect.** The board shall, pursuant to chapter 1-26, promulgate rules which may be reasonably necessary for the performance of its duties, the regulation of proceedings before it, and the licensure of the professions it regulates. The existing rules promulgated under the previous chapter 36-18 remain in effect until replaced. The board shall promulgate rules, pursuant to chapter 1-26, for the licensure of professional engineers, architects, land surveyors, landscape architects, and petroleum release assessors and remediators in the following areas:

- (1) Forms such as applications, renewals, licenses or certificates, and receipts for applicants, licensed professionals, and business entities;
- (2) Fees for applications, examinations, renewals, late penalties, lists and labels of licensees, returned checks, reinstatement, inactive status, ability to allow a vendor to collect fees for examinations, waiver of fees;
- (3) Criteria for types of education degrees, approval of accredited programs, intern programs, type of experience, length of experience, national and state specific examinations, use of computer examinations, criteria from other countries, procedure to evaluate foreign degrees, eligibility of applicants, dual licenses;

- (4) Continuing professional education and development content, hours, carryovers, and requirements;
- (5) How, when, and where to seal plans and documents; type of seal; required services to be provided; and criteria to define complete plans, minimum standards of practice, and guidelines;
- (6) Description of and criteria for construction administration, including a designation of who is to perform construction administration and criteria for a prime professional or a coordinating professional;
- (7) Requirements for compliance with local building code;
- (8) The adoption of a code of professional conduct;
- (9) Procedures for disciplinary proceedings; and
- (10) Procedures for contested cases pursuant to chapter 1-26.

**36-18A-23. Board continued within Department of Labor and Regulation – Retains functions of previous commission.** The Board of Technical Professions shall continue within the Department of Labor and Regulation and shall retain all the prescribed functions, including administrative functions, of the previous State Commission of Engineering, Architectural and Land Surveying Examiners.

**36-18A-24. Record and report policy.** The board shall maintain the following record and report policy:

- (1) A record of its proceedings and all current applications of licensure shall be retained;
- (2) The record of the board shall be prima facie evidence of the proceedings of the board, and a transcript thereof, duly certified by the executive director of the board, shall be admissible as evidence with the same force and effect as if the original were produced; and
- (3) The following are of a confidential nature and are not public records: examination scores, examination material, examination problem solutions, letters of inquiry and references concerning applicants, board inquiry forms concerning applicants and licensees, and investigation files if any investigation is still pending.

**36-18A-25. Engineering intern – Qualifications.** Any applicant for enrollment as an engineering intern shall provide evidence satisfactory to the board that the applicant has graduated from or is admitted in an accredited engineering curriculum and has passed an examination. The examination may be taken during the applicant's senior year of study or at such time as may be determined by the board. The board shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and examination criteria.

**36-18A-26. Professional engineer licensure qualifications – Board to establish criteria.** Any applicant for licensure as a professional engineer shall provide the following evidence satisfactory to the board:

- (1) Graduation from an accredited engineering college, university, or technical program;
- (2) Completion of the minimum number of years of diversified engineering experience under the supervision of a licensed professional engineer; and
- (3) Successful completion of examinations.

The board shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and examination criteria.

**36-18A-27. Architect licensure qualifications – Certification by National Council of Architectural Registration Boards in lieu of qualifications – Board to establish criteria.** Any applicant for licensure as an architect shall provide the following evidence satisfactory to the board:

- (1) Graduation with an accredited professional degree in architecture;
- (2) Completion of the national architectural intern development program; and
- (3) Successful completion of examinations.

The board may qualify an applicant who holds a certification issued by the National Council of Architectural Registration Boards in lieu of the qualifications listed in this section. The board shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and examination criteria.

**36-18A-28. Land surveying intern qualifications – Board to establish criteria.** Any applicant for enrollment as a land surveying intern shall provide evidence satisfactory to the board that the applicant has graduated from an accredited surveying or engineering curriculum, or substantially similar experience acceptable to the board and has passed an examination. The examination may be taken during the applicant's senior year of study or at such time as may be determined by the board. The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience, and examination criteria.

**36-18A-29. Land surveyor qualifications – Board to establish criteria.** Any applicant for licensure as a land surveyor shall provide the following evidence satisfactory to the board:

- (1) Graduation from an accredited engineering or land surveying college, university, or technical program with a minimum of twenty credit hours of surveying curriculum, or substituted experience, in whole or part, acceptable to the board;
- (2) Completion of the minimum number of years of diversified surveying experience under the supervision of a licensed land surveyor; and
- (3) Successful completion of examinations.

The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience, and examination criteria.

**36-18A-30. Landscape architect qualifications – Certification by Council of Landscape Architectural Registration Boards in lieu of qualifications – Board to establish criteria.** Any applicant for licensure as a landscape architect shall provide the following evidence satisfactory to the board:

- (1) Graduation from an accredited program of landscape architecture;
- (2) Completion of a council record from the Council of Landscape Architectural Registration Boards; and
- (3) Successful completion of examinations.

The board may qualify an applicant who holds a certification issued by the Council of Landscape Architectural Registration Boards in lieu of the qualifications listed in this section. The board shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and examination criteria.

**36-18A-31. Petroleum release assessor or remediator – Qualifications – Board to establish criteria.**

Any applicant for licensure as a petroleum release assessor or remediator shall provide the following evidence satisfactory to the board:

- (1) Completion of education and experience requirements; and
- (2) Successful completion of examinations.

The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience, and examination criteria.

**36-18A-32. Oral interview – Failure to provide information as grounds for disciplinary action – Interpretation of experience and education.**

The board may require the applicant to appear for an oral interview if there are questions as to the depth, extent, and quality of any experience. Failure to supply additional evidence or information within thirty days from the date of a written request from the board, or failure to appear before the board if an appearance is requested, may be considered cause for disciplinary action or disapproval of an application. The board shall interpret qualifying experience and education according to the following:

- (1) Qualifying experience is diversified, general practice experience of a progressive degree of difficulty, magnitude, and responsibility under proper professional guidance and supervision of licensed persons;
- (2) For partially completed work in accredited or approved degree granting curriculums, education credit of three-fourths of a year may be allowed for each thirty semester hours of study. For work in vocational or trade schools, education credit of one-half of a year may be allowed for each thirty semester hours of study;
- (3) Education from foreign schools shall be evaluated with accredited programs in the United States, and experience in foreign employment under licensed persons shall be evaluated by the board;
- (4) Qualifying experience under proper professional guidance and supervision of licensed persons gained in work experience with governmental agencies, the military, construction, sales, and industry requiring the application of skills normally taught in the schools of engineering, science, architecture, or land surveying may be evaluated by the board. The board shall give credit for experience as warranted;
- (5) Teaching at the junior year level and above of engineering, science, architectural, landscape architectural, and land surveying courses in accredited or approved curriculums is acceptable experience for a maximum of one year.

**36-18A-33. Examination requirements – Fees.** The board shall admit to examination any candidate who pays a fee, not exceed two hundred dollars, established by the board and submits an application with evidence satisfactory to the board that the applicant satisfies the necessary education and experience requirements. The board may require an applicant for licensure or a current licensee to take an examination as it deems necessary to determine that person's professional minimum competency. Upon



approval of examination applications, examination fees may be paid by the applicant directly to a national vendor or third party. The board may hold membership in and be represented at national councils or organizations of professional practices licensed under this chapter and may pay the appropriate membership fees. The board may allow proctoring of examinations for approved candidates at out-of-state or overseas sites by administrators of national council member boards. The board may accept candidates to be proctored in this state from other national council member boards. A take-home questionnaire based on statutes and rules and related to professionalism and ethics may also be required. The board shall promulgate rules, pursuant to chapter 1-26, to establish application, examination, and proctor fees for all examinations. No fee may exceed one thousand dollars.

**36-18A-34. Notice of results – Reexamination – Fees.** The board shall notify each applicant of the results of the examination and those entitled to licensure or enrollment. If an applicant fails the examination and the applicant's application is still current, subsequent reexaminations may be granted upon payment of a fee. The board shall promulgate rules, pursuant to chapter 1-26, to establish reexamination fees, not to exceed two hundred dollars, for all licensure and enrollment applicants.

**36-18A-35. Comity licensure.** The board may give comity consideration to any person who holds a current and valid license issued to that person for active practice by the proper authority in any state or territory of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and were of a standard not lower than that specified in the applicable licensure act in effect in this state at the time such license was issued. An applicant may be required to take examinations as the board deems necessary to determine the applicant's competency. A comity applicant for landscape architecture shall hold a current and valid certification from the Council of Landscape Architectural Registration Boards to be eligible for comity licensure. The board shall promulgate rules, pursuant to chapter 1-26, to set the application fee for licensure by comity. The fee may not exceed two hundred dollars.

**36-18A-36. License issued to successful applicant.** The board shall grant a license to any applicant as a professional engineer, architect, land surveyor, landscape architect, petroleum release assessor or remediator, or for any two or more of these titles who has met the requirements of this chapter.

**36-18A-37. Display of license in place of business – Replacement license.** The license shall be displayed in a conspicuous place in the licensee's principal office, place of business, or place of employment within the state. A new license to replace a lost, destroyed, or mutilated license shall be issued upon payment of a fee established by the board pursuant to chapter 1-26.

**36-18A-38. Practice permitted recipient of license – Use of titles – License as evidence.** The recipient of a license issued under this chapter may practice engineering, architecture, land surveying, landscape architecture, petroleum release assessment, or petroleum release remediation and use the appropriate title professional engineer, architect, land surveyor, landscape architect, petroleum release assessor, or petroleum release remediator. A licensee may use a title either with or without prefixing the word, licensed or registered. No licensee may practice a profession or use a title unless the license specifically permits such practice and usage. An unrevoked and unexpired license issued as provided in this chapter is presumptive evidence in all courts and places that the person named is legally licensed.

**36-18A-39. Expiration and biennial renewal of licenses – Continuing professional education.** A license expires two years after the date of issuance and becomes invalid on that date unless renewed by that date. Any professional engineer, architect, land surveyor, landscape architect, or petroleum release assessor or remediator licensed under this chapter who desires to continue to practice or offer to practice the licensee's profession shall:

- (1) Pay the renewal fee, not to exceed two hundred dollars, established by the board in rules promulgated pursuant to chapter 1-26; and
- (2) Successfully complete all continuing professional development requirements established by the board or make a showing of good cause why the licensee was unable to comply with such requirements.

The board shall promulgate rules, pursuant to chapter 1-26, to establish continuing professional education and development criteria.

**36-18A-40. Failure to complete continuing professional development requirements as grounds for nonrenewal – Inactive or retired status.** The board may decline to renew a license if an applicant has not completed continuing professional development requirements. A license for a two-year period shall be issued upon completion of the requirements. The board may provide, by rules promulgated pursuant to chapter 1-26, for the inactive or retired status of a person who has been duly licensed under this chapter and who chooses to relinquish or not to renew a license.

**36-18A-41. Advance notice by board of expiration of license, professional development requirements, and fees.** The board shall notify by mail any person licensed under this chapter of the date of expiration of the license, the requirement of professional development hours, and the amount of the fee required for renewal. The notice shall be mailed to the last known address of the licensee at least one month in advance of the date of expiration of the license. A licensee shall notify the board of any address changes.

**36-18A-42. Reinstatement of expired license or request for inactive status – Time limits – Requirements for reinstatement.** A person or business entity may reinstate an expired license or request inactive status within three years after a license's date of expiration if the person or business entity is otherwise qualified. The fee for the reinstatement of the license or requesting inactive status after it has expired shall be increased by an amount to be determined by the board in rules promulgated pursuant to chapter 1-26. A person requesting reinstatement of an expired or inactive license shall complete the requirements for continuing professional development and any reexaminations and pay any penalty fees. If a person or business entity fails to reinstate an expired license or request inactive status within the three years after the date of expiration, all relevant files shall be destroyed. A person or business entity requesting licensure after three years shall submit an application for a new license. A person or business entity shall retain the person's or business entity's original license number.

**36-18A-43. Request for inactive or retired status – Fee.** Any licensed person may request that the person's license be placed on inactive or retired status. A fee, not to exceed two hundred dollars, to place files on inactive or retired status shall be determined by the board in rules promulgated pursuant to chapter 1-26. Failure to render any fees required for inactive or retired status shall result in the automatic termination of inactive or retired status. The request for files to be placed on inactive or retired status may be denied by the board. No person may practice or offer to practice while that person's files are inactive or retired.

**36-18A-44. Stamp or seal of licensees – Contents – Certain persons prohibited from using seal.**

Any licensed professional engineer, architect, land surveyor, and landscape architect shall procure and use an appropriate seal. The seal shall contain the following information:

- (1) The name, South Dakota;
- (2) Licensee's name;
- (3) License number; and
- (4) The appropriate title or combination of titles: Professional Engineer, Architect, Land Surveyor, Landscape Architect.

The seal shall have an outer circle with a two-inch diameter and an inner circle with a one and one-fourth inch diameter. Titles may be prefixed with the words, Licensed or Registered. The seal may be an embossed seal, a rubber stamp, a computer-generated seal, or other facsimile found acceptable to the board. The licensee's original written signature and the date shall be adjacent to or across the seal. Petroleum release assessors and remediators, or interns, may not obtain or use any seal.

**36-18A-45. Seal, signature and date as certification of work done by licensee – Documents on which seal is required – Preliminary work – Multiple seals – Electronically transmitted documents.**

The application of the licensee's seal and signature and the date constitutes certification that the work on which it was applied was done by the licensee or under the licensee's responsible charge. The seal, signature, and date shall be placed in such a manner that can be legibly reproduced on the following:

- (1) All originals, copies, tracings, or other reproducibles of all final drawings, specifications, reports, plats, plans, land surveys, design information, and calculations prepared by the licensee or under the licensee's responsible charge when presented to a client or any public or governmental agency. A licensee may not review or check technical submissions of another licensed professional or unlicensed person and seal the documents as the licensee's own work;
- (2) Preliminary work shall contain a note that the submittal is Not for Construction, Preliminary, or other such explanation that it is not final;
- (3) In the case of multiple seals, the title or index sheet may be sealed, signed, and dated by all involved. In addition, each sheet shall be sealed, signed, and dated by the licensee or licensees responsible for that sheet;
- (4) Drawings that are transmitted electronically to a client or governmental agency shall have the computer-generated seal removed from the original file. The electronic media shall have the following inserted in lieu of the seal, signature, and date: This document originally issued and sealed by (name of licensee/sealer), (title), (license number), on (date of sealing). This media should not be considered a certified document.
- (5) Drawings, reports, or documents that are signed and sealed using a digital method shall have an electronic authentication process attached to or logically associated with the electronic documents. The digital signature shall be:
  - (a) Unique to the person using it;
  - (b) Capable of verification;

- (c) Under the sole control of the person using it; and
- (d) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

**36-18A-45.1 Digital signatures.** A digital signature that uses a process approved by the board is presumed to meet the criteria set forth in § 36-18A-45(5). Any hard copy printed from the transmitted electronic file shall bear the facsimile of the signature and seal and shall be a confirmation that the electronic file was not altered after the initial digital signing of the file. Any alterations to the file shall cause the facsimile of the signature to be voided.

**36-18A-46. Construction administration services to be provided by architect or engineer.** No person other than an architect or professional engineer may provide architectural and engineering services which include construction administration services on projects that are not exempt pursuant to §§ 38-18A-2 and 36-18A-3. The architect or professional engineer of record, or another designated architect or professional engineer without conflict of interest, shall provide a written report of observed deficiencies or variations from the submitted plans and specifications to the building official, owner, and builder before project completion. The board may promulgate rules pursuant to chapter 1-26 to establish construction administration services criteria including coordinating and prime professional criteria for persons licensed by the board.

**36-18A-46.1 Completion of work – Successor licensee – Nonprofessional services.** If determined by the board that a licensee in responsible charge of the work is unavailable to complete the work, a successor licensee may take responsible charge by performing all professional services to include developing a complete design file with work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The nonprofessional services, such as drafting, need not be redone by the successor licensee but shall clearly and accurately reflect the successor licensee's work. The burden is on the successor licensee to show compliance. The successor licensee shall sign, date and seal all original documents. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

**36-18A-47. Firm or office to have appropriately licensed person in charge.** Any office physically located and maintained in this state to offer engineering, architectural, land surveying, landscape architectural, petroleum release assessment, or petroleum release remediation services shall have an appropriately licensed person who is regularly employed in that office and who has responsible charge and direct supervision and control of all professional services. No licensee who renders occasional, part-time, or consulting services to or for an office may be designated as the appropriately licensed person in responsible charge for the professional activities of the office unless a schedule is posted at the office for the public's knowledge and filed with and approved by the board stating when the licensee is physically in the office.

**36-18A-48. Business entity must obtain certificate of authorization – Responsibility for acts of individuals.** Any business entity that desires to practice engineering, architecture, land surveying, landscape architecture, or petroleum release assessment or remediation in this state shall register with the board by making application for a certificate of authorization. A business entity is responsible for the conduct or acts of its agents, employees, officers, partners, members, or managers in respect to any engineering, architecture, land surveying, landscape architecture, petroleum release assessment, or petroleum release remediation services performed or to be executed in this state. No person is relieved of the responsibility for that person's conduct or acts performed by reason of that person's employment by or relationship with a business entity. A licensee who renders occasional, part-time or consulting services to

or for a business entity may not be designated as the person in responsible charge for the professional activities of the business entity.

**36-18A-49. Application for certificate of authorization – Contents.** A business entity or office desiring a certificate of authorization or renewal shall file a written application with the board which shall contain the following:

- (1) The names, license numbers and profession of all employees or sole proprietors of the business entity or office who are duly licensed to practice engineering, architecture, land surveying, landscape architecture, petroleum release assessment, or petroleum release remediation in this state and who are or will be in responsible charge of any professional services in this state by the business entity or office;
- (2) A statement from the business entity that the Board office will be notified in writing within 30 days after the effective date of any change;
- (3) A statement by a licensed person who works for the business entity or office that the business entity or office will not permit the performance of any professional service, as defined in this chapter, by any person of the business entity or office unless the person is licensed under this chapter; and
- (4) All other information the board may deem necessary as promulgated by rule pursuant to chapter 1-26.

**36-18A-50. Issuance of certificate of authorization – Certificate non-transferable – Exempt business.** The board shall issue a certificate of authorization or a renewal to a business entity or office upon receipt of an application for a certificate of authorization and a fee as set by the board pursuant to chapter 1-26 unless the board finds an error in the application or that any facts exist which would entitle the board to suspend or revoke the certificate if issued to the applicant. The certificate of authorization is not transferable. A certificate of authorization is not required for any exempt business.

**36-18A-51. Business to report changes in information supplied on application – Time limit.** The business entity shall file with the board a written report of any change in the information submitted on the application that occurs during the term of the certificate of authorization. The business entity shall report the change within thirty days after the effective date of the change. Failure to provide the report constitutes grounds for the board to suspend or revoke the certificate of authorization.

**36-18A-52. General provisions applicable to business entities.** The provisions with respect to issuance, expiration, renewal, and re-issuance of the certificate of licensure of persons contained in this chapter apply to certificates of authorization issued to business entities under the provisions of this chapter. A business entity is subject to disciplinary proceedings and penalties, and certificates of authorization are subject to suspension or revocation for cause, in the same manner and to the same extent as is provided with respect to individuals and their certificates of licensure in this chapter. The terms, licensee and certificate of licensure, as used in this chapter, apply to any business entity holding a certificate of authorization issued under this chapter and to such certificate of authorization.

**36-18A-53. Employee not responsible for corporate violations – Exception.** A violation of any of the provisions of this chapter by a business entity is not grounds for the revocation, suspension, or refusal to renew a license of an individual employee of the business entity unless the board finds that the employee was a party to the violation.

**36-18A-54. Board inquiries and investigation of violations – Report and prosecution.** The board shall inquire into the identity of any person alleged to be engaging in the unlawful practice of engineering, architecture, land surveying, landscape architecture, petroleum release assessment, or petroleum release remediation. The board shall investigate alleged violations of the provisions of this chapter, and report to the proper state's attorney or the attorney general any person or case that in the judgment of the board warrants prosecution. The attorney general or the several state's attorneys may prosecute violations of this chapter in the name or on behalf of the board.

**36-18A-55. Board authorized to administer oaths, subpoena witnesses – Court order to compel compliance.** When investigating alleged violations, the board may administer oaths to witnesses appearing before the board, subpoena licensees as witnesses and compel their attendance, and require the submittal of plans, specifications, books, records, papers, and other documents. If a licensee refuses to obey any subpoena, or refuses to testify or produce any materials required, the board may take disciplinary action or present its petition to the court of the county in which the licensee resides, and the court may enter a suitable order compelling compliance with the provisions of this chapter and imposing such other terms and conditions as the court may deem suitable. The board may also summon nonlicensees as witnesses and request their attendance, and request the submittal of plans, specifications, books, records, papers, and other documents. If a nonlicensee refuses to cooperate, testify, or produce any materials requested, the board may petition the court of the county in which the nonlicensee resides, and the court may enter a suitable order compelling compliance with the provisions of this chapter and imposing such other terms and conditions as the court may deem suitable.

**36-18A-56. Proof of injury not necessary for board action on certain violations.** The board may take action without proof of actual injury on the following violations:

- (1) Has violated any statute, rule, or order that the board has issued or is empowered to enforce;
- (2) Has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether or not the conduct or acts relate to professional practice;
- (3) Has engaged in conduct or acts that are negligent, incompetent, reckless, or otherwise in violation of established standards related to that person's professional practice;
- (4) Has been convicted of or has pleaded guilty or nolo contendere to a felony, whether or not the person admits guilt, or has been shown to have engaged in acts or practices tending to show that the applicant or licensee is incompetent or has engaged in conduct reflecting adversely on the person's ability or fitness to engage in that person's professional practice. A copy of the record of conviction or plea of guilty or nolo contendere is conclusive evidence;
- (5) Has employed fraud or deception in obtaining a license or renewal of a license or in passing all or a portion of the examination;
- (6) Has had that person's professional license, registration, certificate, right to examination, or other similar rights to practice revoked, suspended, canceled, given probation, limited, censured, reprimanded, or not renewed for cause in any state or territory of the United States, the District of Columbia, or in any foreign country;
- (7) Failed to meet any requirement for issuance or renewal of the person's license or certificate;
- (8) Has used or attempted to use as that person's own the certificate or seal of another;

- (9) Has used or attempted to use an expired, suspended, or revoked license;
- (10) Has placed that person's seal or signature to a plan, specification, report, plat, or other technical submission or document not prepared by that person or under that person's responsible charge;
- (11) Aided or assisted another person in violating any provision of this chapter or the rules pertaining to this chapter;
- (12) Failed to promptly and appropriately provide information requested by the board as a result of a formal or informal complaint to the board which would indicate a violation of this chapter;
- (13) Has provided false testimony or information to the board;
- (14) Failed to report known violations of this chapter;
- (15) Has engaged in the use of untruthful or improbable statements in advertisements;
- (16) Failed to complete continuing professional development requirements set by the board;
- (17) Made misleading or untruthful representations in advertisements or published materials;
- (18) Falsely used any title, figures, letters, or descriptions to imply licensure;
- (19) Is habitually intoxicated or is addicted to the use of alcohol or illegal drugs;
- (20) Has committed an act, engaged in conduct, or committed practices that may result in an immediate threat to the public; or
- (21) Has provided professional services in technical areas not covered by that person's license or competency.

**36-18A-57. Disciplinary remedies available to board.** If the board determines that a person or business entity is in violation of this chapter, the board may take the following actions:

- (1) Deny an application;
- (2) Suspend, temporarily suspend, revoke, or refuse to renew an enrollment or license;
- (3) Place on probation, condition, or limit a licensee's practice;
- (4) Reimburse the board for expenses, fine, censure, or reprimand a person or business entity;
- (5) Refuse to permit a person to sit for examination or refuse to release a person's examination scores;
- (6) Require a person to sit for a reexamination; and
- (7) Pursue legal actions against a person or business entity that is not licensed to offer or render practices covered by this chapter.

**36-18A-58. Additional remedies.** In lieu of or in addition to any disciplinary remedy provided in § 36-18A-57 or civil remedy provided in § 36-18A-61, the board may require, as a condition of continued licensure, termination of suspension, reinstatement of license, examination, or release of examination grades, that the person:

- (1) Submit to a qualifying review of the person's ability, skills, or quality of work. The person may be required to attend remedial education courses; and
- (2) Complete to the satisfaction of the board continuing professional education courses as the board may specify by rule or order, pursuant to chapter 1-26.

**36-18A-59. Proceedings for revocation or suspension of license.** Proceedings for the revocation or suspension of a license shall be conducted pursuant to chapter 1-26 and rules promulgated pursuant to this chapter.

**36-18A-60. Findings and actions of board subject to appeal.** The findings and actions of the board on disciplinary matters shall be subject to appeal as provided by chapter 1-26 and rules promulgated pursuant to this chapter.

**36-18A-61. Civil remedies available to board.** Any person who has violated any provision of this chapter or any rule promulgated pursuant to this chapter, is subject to the following penalties:

- (1) Administrative fine:
  - (a) Licensed person: Any person licensed by the board who violates any provision of this chapter is liable for an administrative fine not to exceed two thousand dollars for each offense;
  - (b) Licensed business entity: Any business entity permitted to practice by the board that violates any provision of this chapter is liable for an administrative fine not to exceed five thousand dollars for each offense.

An administrative fine not paid within sixty days from the date of the order imposing the fine may be enforced by an action in the appropriate county circuit court. Any person aggrieved by an order under this subdivision may make an appeal pursuant to chapter 1-26;

- (2) Injunction: If the board deems it necessary for the public safety, it may bring an action in the name of the state in the circuit court in any county in which jurisdiction is proper to enjoin the act, practice, or violation and to enforce compliance with this chapter or any rule promulgated pursuant to this chapter. Upon showing that a person has engaged in an otherwise unauthorized act or practice, a permanent or temporary injunction, or restraining order, or other appropriate relief shall be obtained against the person to prohibit the continuation of the unauthorized act or practice. If a person has caused a structure to be designed, constructed, or built by engaging in an unauthorized act or practice, a permanent or temporary injunction or restraining order, or other appropriate relief, shall be obtained against the project prohibiting the use and occupancy of any structure. For purposes of injunctive relief under this subdivision, irreparable harm exists if the board shows that a person has engaged in an act or practice constituting the unauthorized use of a title, words, figures, or sign implying licensure, or a violation of a statute, rule, or order that the board has issued or is empowered to enforce;



- (3) Cease and desist order: The board may issue and have served upon a person an order requiring the person to cease and desist from any unauthorized practice or act which is in violation of this chapter or any rule promulgated pursuant to this chapter. The cease and desist order shall give reasonable notice of the rights of the person to request a hearing pursuant to chapter 1-26 and shall state the reasons for the entry of the order.

**36-18A-62. Service of cease and desist order**. Service of the order is effective if the order is served on the person or counsel of record personally or by certified mail to the most recent address provided to the board for the person or counsel of record. Unless otherwise agreed by the board and the person requesting the hearing, the hearing shall be held no later than ninety days after the request for the hearing is received by the board.

**36-18A-63. Report issued after hearing – Further order**. The board or administrative law judge shall issue a report within thirty days of the close of the contested case hearing record. Within thirty days after the report and any exceptions to it, the board shall issue a further order vacating, modifying, or making permanent the cease and desist orders as the facts require.

**36-18A-64. Order becomes final if no hearing requested – Other remedies not precluded**. If no hearing is requested within the thirty days of service of the order, the order becomes final and remains in effect until it is modified or vacated by the board. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person is in default and the proceeding may be determined against that person upon consideration of the cease and desist order, the allegations of which may be considered to be true. Action taken pursuant to this section does not relieve a person from criminal prosecution by a competent authority or from disciplinary action by the board with respect to the person's license, registration, certification, application for examination, or renewal.

**36-18A-65. Prohibited acts – Violation as Class 2 misdemeanor**. No person may:

- (1) Practice, or offer to practice, the professions of engineering, architecture, land surveying, landscape architecture, petroleum release assessment, or petroleum release remediation in this state without being licensed or exempt in accordance with the provisions of this chapter;
- (2) Use or employ the title of architect, landscape architect, land surveyor, professional engineer, petroleum release assessor, or petroleum release remediator with or without qualifying adjectives without being licensed in accordance with the provisions of this chapter;
- (3) Use any other words, letters, or figures indicating or intending to imply that the person is a professional engineer, architect, land surveyor, landscape architect, petroleum release assessor, or petroleum release remediator without being licensed in accordance with the provision of this chapter;
- (4) Present or attempt to use the certificate of licensure or seal of another, or affix a professional engineer's, architect's, land surveyor's, or landscape architect's seal on any plans, specifications, drawings, or other technical submittals which have not been prepared by that person or under that person's responsible charge and direct personal supervision;
- (5) Present any false or forged evidence of any kind to the board in obtaining a certificate of licensure;
- (6) Falsely impersonate any other licensee;

- (7) Attempt to use an expired, suspended, or revoked license;
- (8) Knowingly allow person's name or seal to be used upon plans or work not actually performed by that person or under that person's responsible charge and direct supervision; or
- (9) By act of commission or omission, violate any of the provisions of this chapter.

A violation of this section is a Class 2 misdemeanor.

**36-18A-66. Prohibited acts – Repeated violation as Class 1 misdemeanor.** No person may:

- (1) Accept or contract to receive, directly or indirectly, any commission, percentage, gift, or other item of value for that person's influence in securing a contract or approving the performance of a contract, from any manufacturer, agent, or vendor of any material of any sort used or recommended to be used in the construction of any project for the plans or construction of which any person is employed; or
- (2) Give or offer to give to any person any commission, percentage, gift, or other item of value for that person's influence in securing a contract or approving the performance of a contract or supplying any material of any sort which may be for consideration in the construction of any project.

A violation of this section is a Class 2 misdemeanor for the first offense and a Class 1 misdemeanor for the second or any subsequent offense.

**36-18A-67. Fee to reimburse board for costs.** The board may impose a fee to reimburse the board for all or part of the cost of proceedings resulting in disciplinary action authorized by this chapter, the imposition of civil penalties, or the issuance of a cease and desist order. The fee may be imposed if the board shows a person has committed an act or engaged in unauthorized practice, including the unauthorized use of a title, words, figures, or signs implying licensure, or has violated a statute, rule or order of the board. The costs include the amount paid by the board for services from attorney fees, investigators, court reporters, witnesses, expert witnesses, reproduction of records, board members' per diem compensation, board staff time, and expense incurred by board members and staff.

**36-18A-68. Limitation on liability of licensed professionals – Exception.** A professional engineer, architect, land surveyor, landscape architect, petroleum release assessor, or petroleum release remediation services is not liable for the safety of persons or property on or about a construction project site, or for the construction techniques, procedures, sequences, and schedules, or for the conduct, action, errors, or omissions of any construction contractor, subcontractor, construction manager, or material supplier, their agents or employees, unless that person assumes responsibility therefor by contract or by that person's actual conduct. This section does not relieve a professional engineer, architect, land surveyor, landscape architect, petroleum release assessor, or petroleum release remediation services from liability for that person's negligence in design work.

**36-18A-69. Contracts in violation unenforceable.** Any contract, written or oral, for engineering, architectural, land surveying, landscape architectural, petroleum release assessment, or petroleum release remediation services made by any person in violation of any provision of this chapter is unenforceable as to such services. It is a complete defense to any action to enforce payment for any services, if the party contracting for services proves that the person rendering or offering to render services was not at the time such services were offered or rendered, legally authorized to contract for such services.

**36-18A-70. Plans, specifications, plats and submissions in violation unacceptable.** No public officer or employee, as defined in §§ 22-1-2 (37) and (39), charged with the authority or responsibility of approving or accepting plans, specifications, plats, or any other technical submissions, may accept or approve such plans, specifications, plats, or technical submissions which have been prepared in violation of this chapter.

The building official shall require the owner to engage and designate an architect or professional engineer who shall act as the architect or professional engineer of record on projects that are not exempt. If the circumstances require, the owner may designate a substitute architect or professional engineer of record who shall perform all of the duties required of the original architect or professional engineer of record. The building official shall be notified in writing by the owner if the architect or professional engineer of record is changed or is unable to continue to perform the duties. The architect or professional engineer of record is responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building. A building permit issued with respect to technical submissions which do not conform with the requirements of this chapter are invalid.

**36-18A-71. Register of deeds not to record land survey documents which do not contain signature, seal and date.** No register of deeds of any county may file or record any map, plat, survey, or other technical submissions within the definition of land surveying which does not have impressed thereon and affixed thereto the personal signature, seal, and date of a land surveyor by whom or under whose responsible charge and direct personal supervision the map, plat, survey, or other technical submissions were prepared.

**36-18A-72. Board to establish procedures and standards for certification of environmental technical services.** The board may promulgate rules, pursuant to chapter 1-26, regarding procedures and standards for certifying those who perform environmental technical services relative to site assessment, remedial investigations, and corrective actions necessary to remediate water or soil contaminated with a regulated substance and to establish fees to support this activity. Procedures and requirements may be promulgated by rule for determining eligibility, denial, suspension, and revocation of certification. Standards may include more than one level of certification for persons and business entities, any combination of academic background, professional experience, testing, or other technical professional licenses. Any person or business entity who practices without certification pursuant to this section is guilty of a Class 1 misdemeanor.

**36-18A-73. Certification required for environmental technical services – Violation as misdemeanor.** No person or business entity may perform environmental technical services without certification. A violation of this section is a Class 1 misdemeanor.

**36-18A-74. Continuation of licenses and enrollments issued under chapter 36-18.** All licenses and enrollments in effect on July 1, 1999, and issued pursuant to chapter 36-18, are continued for the balance of the term for which last issued.

**36-18A-75. Certain activities of golf course designers authorized – "Golf course designer" defined.** Nothing in this chapter prohibits any person from engaging in the practice of, or offering to engage in practice as, a golf course designer. For purposes of this section, the term, golf course designer, means a person who performs professional services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications, and responsible supervision, if the predominant purpose of such services is the design of a golf course.

ADMINISTRATIVE RULES - ARTICLE 20:38  
SOUTH DAKOTA BOARD OF TECHNICAL PROFESSIONS  
Last Revision of 1/16/12, Publish Date of 7/1/12

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**CHAPTER 20:38:27**  
**GENERAL RULES AFFECTING BOARD**

20:38:27:01	Definitions
20:38:27:02	Meetings
20:38:27:03	Organization
20:38:27:04	Voting
20:38:27:05	Duties of board members
20:38:27:06	Absence of officers
20:38:27:07	National councils

**20:38:27:01. Definitions.** Terms defined in SDCL chapter 36-18A have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) "ARE," Architectural Registration Examination;
- (2) "ASAC/ABET," Applied Science Accreditation Commission of Accreditation Board for Engineering and Technology, Inc.;
- (3) "CACB," Canadian Architectural Certification Board;
- (4) "CLARB," Council of Landscape Architectural Registration Boards;
- (5) "EAC/ABET," Engineering Accreditation Commission of Accreditation Board for Engineering and Technology, Inc.;
- (6) "EI," engineering intern;
- (7) "EIT," engineer-in-training;
- (8) "FE," Fundamentals of Engineering Examination;
- (9) "FS," Fundamentals of Land Surveying Examination;
- (10) "IDP," intern development program for architects;
- (11) "LAAB," Landscape Architectural Accrediting Board;
- (12) "LARE," landscape architectural registration exam;
- (13) "LSI," land surveying intern;
- (14) "LSIT," land surveyor-in-training;
- (15) "NAAB," National Architectural Accrediting Board;
- (16) "NCARB," National Council of Architectural Registration Boards;
- (17) "NCEES," National Council of Examiners for Engineering and Surveying;
- (18) "NICET," National Institute for Certification in Engineering Technologies;
- (19) "PDH," Professional Development Hour;
- (20) "PE," Principles and Practice of Engineering Examination;
- (21) "PS," Principles and Practice of Land Surveying Examination; and
- (22) "TAC/ABET," Technology Accreditation Commission of Accreditation Board for Engineering and Technology, Inc.

**20:38:27:02. Meetings.** The board shall meet every other month beginning in January at the board's office unless otherwise specified by notice.

**20:38:27:03. Organization.** At its last regular meeting prior to June 30, the board shall elect a chair, vice chair, and secretary from its members. The newly elected officers shall take office on July 1.

**20:38:27:04. Voting.** Any member of the board, including the chair, may vote and make or second motions. A majority of those present is required to pass a motion. The chair shall vote as a member of the board.

**20:38:27:05. Duties of board members.** The chair shall preside at all meetings and shall appoint any committees authorized by the board. The chair shall sign all certificates of licensure and other official documents. The chair shall perform all duties usually pertaining to the office of the chair. The vice chair shall perform the duties delegated to the chair in the absence or incapacity of the chair. The secretary is responsible for the supervision of the minutes of all meetings.

**20:38:27:06. Absence of officers.** In the absence of the chair and vice chair from a meeting of the board, the remaining members shall elect a presiding officer who shall serve until the conclusion of the meeting or until the arrival of the chair or vice chair.

**20:38:27:07. National councils.** The board may affiliate with the National Council of Architectural Registration Boards (NCARB), the National Council of Examiners for Engineering and Surveying (NCEES), and the Council of Landscape Architectural Registration Boards (CLARB). Any board member, consultant, or employee appointed by the board may attend meetings of the councils at board expense, subject to compliance with SDCL 3-9-2, 3-9-4, and 3-9-6.

## **CHAPTER 20:38:28 LICENSURE AND ENROLLMENT**

20:38:28:01     Certificates  
20:38:28:02     Late renewal  
20:38:28:03     Inactive or retired status

**20:38:28:01. Certificates.** Upon satisfaction of all requirements for licensure as a professional, enrollment as an intern, or licensure as a business entity, the executive director shall provide the applicant with a numbered certificate indicating the type of licensure or enrollment; and the issue or expiration date. The board shall enter the name of each applicant granted licensure or enrollment into its meeting minutes.

A certificate of enrollment as an intern does not authorize the enrollee to practice as a licensed professional or to imply that such a professional title is held.

**20:38:28:02. Late renewal.** Within three years from the date of expiration, the board may accept a late renewal if the expired license holder pays the late renewal penalty fee, the biennial renewal fee, meets continuing professional development requirements, and passes a take-home examination covering South Dakota laws and ethics. A business entity must only pay the late renewal fee and the biennial renewal fee. After three years from the date of expiration, an individual or business entity must submit a new application for licensure. A person shall not practice or offer to practice as a professional during the period of licensure expiration.

**20:38:28:03. Inactive or retired status.** Upon licensee request, the board may grant inactive or retired status if the following criteria are met:

- (1) The person no longer practices the profession or offers to practice the profession;
- (2) The person has not had a professional license revoked in any state; and
- (3) The required fees are paid.



A person maintaining inactive status may apply for license reactivation if the person meets all current requirements for licensure, including continuing professional development, pays the application fee and passes a take home examination covering South Dakota laws and ethics.

A person maintaining retired status may use the appropriate title with the notation “Retired” after the title.

## **CHAPTER 20:38:29 APPLICATIONS**

20:38:29:01	Application required
20:38:29:02	References
20:38:29:03	Deadlines
20:38:29:04	Notification
20:38:29:05	Denial
20:38:29:06	Expiration

**20:38:29:01. Application required.** An application is required in accordance with the provisions of this chapter, for each of the following:

- (1) Individual licensure;
- (2) Individual license renewal;
- (3) Individual license reactivation;
- (4) Business entity licensure;
- (5) Business entity license renewal;
- (6) Business entity license reactivation;
- (7) Admission to examination, including ARE, FE, PE, FS, LS, LARE, and petroleum release examinations.

An application must be made on the appropriate form, be complete, legible and accompanied by the appropriate application fee. By submitting an application, an applicant certifies, under penalty of perjury, that the information submitted by the applicant is true and correct. An applicant may be required to clarify, expand, or provide additional information as needed to fully evaluate the application.

Any change in the information provided by an applicant or licensee, including the mail or email address must be provided to the board office within 30 days of the change.

**20:38:29:02. References.** Applications for licensure shall include the names and addresses of at least five references. At least three references must be licensed professionals in good standing in the applicant's profession, and each reference must have personal knowledge of the applicant's experience. Applications for admission to examination shall include, as references, the names and addresses of the licensed professionals in responsible charge of the applicant's professional experience in each professional employment period. If any response is unfavorable, additional qualifying experience may be required. If a reference fails to respond, the application may be delayed until either the response is received or the response of another reference is received. A current board member may not be used as a reference.

**20:38:29:03. Deadlines.** Applications complete with all required information and with payment of the required fee, must be filed with the executive director according to the following schedule of deadlines:

- (1) Individual or business renewal or reactivation – monthly on the last day of the month;
- (2) Individual or business licensure – January 1, March 1, May 1, July 1, September 1, and November 1;

- (3) FE, PE, FS, or LS examination – January 1 and July 1;
- (4) LARE – March 1 and September 1; and
- (5) Petroleum release examination – January 1, March 1, May 1, July 1, September 1 and November 1.

**20:38:29:04. Notification.** An applicant shall be notified by mail of the board's approval or denial of an application. If the application is denied, the notification shall include an explanation.

**20:38:29:05. Denial.** In addition to the grounds in SDCL 36-18A-40, 36-18A-56, 36-18A-65, and 36-18A-66, the board may deny an application based on grounds stated in chapter 20:38:36.

**20:38:29:06. Expiration.** An application shall expire and be destroyed after six months from receipt if the application is not completed within that time, or if the application is denied by the board for any reason. For applications for admission to the ARE, the period shall be five years commencing on the date when the first passed division is administered.

## **CHAPTER 20:38:30 EDUCATION REQUIREMENTS**

20:38:30:01	Architecture
20:38:30:02	Engineering
20:38:30:03	Land surveying
20:38:30:04	Landscape architecture
20:38:30:05	Petroleum release assessment
20:38:30:06	Petroleum release remediation

**20:38:30:01. Architecture.** An applicant for licensure as an architect shall meet the following education requirement:

- (1) A professional degree in architecture from a program accredited by the National Architectural Accreditation Board (NAAB);
- (2) A professional degree in architecture from a Canadian university certified by the Canadian Architectural Certification Board (CACB);
- (3) A degree in architecture satisfying a degree evaluation by Education Evaluation Services for Architects (EESA) as a part of NCARB's Broadly Experienced Architect (BEA) certification program; or
- (4) A degree in architecture from a foreign education program that satisfies a foreign degree evaluation by EESA.

For a degree evaluation by EESA, NCARB will, upon applicant request, inform the applicant of the type of evaluation required from EESA. The applicant must ask EESA to send a copy of its completed evaluation report directly to NCARB. Based upon the report, NCARB will determine whether the applicant has met the education requirement, or will meet the requirement when all reported deficiencies have been corrected via additional course work or testing as prescribed by EESA.

An NCARB certification shall be accepted by the board as evidence that the education requirement has been met.

**20:38:30:02. Engineering.** An applicant for licensure as a professional engineer shall meet the following education requirement:

- (1) A bachelor level degree from a program accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET) or its equivalent as evaluated by NCEES Credentials Evaluation Service;
- (2) A bachelor level degree from a program accredited by the Technology Accreditation Commission (TAC) of ABET or its equivalent as evaluated by NCEES Credentials Evaluation Service;
- (3) A bachelor level degree from a program accredited by the Canadian Engineering Accreditation Board (CEAB);
- (4) A degree satisfying a foreign degree evaluation by the NCEES Credentials Evaluation Service; or
- (5) A degree satisfying a domestic degree evaluation by the NCEES Credentials Evaluation Service.

**20:38:30:03. Land surveying.** An applicant for licensure as a land surveyor shall meet the following education requirement:

- (1) A bachelor level degree in surveying from a program accredited by EAC, ASAC or TAC of ABET or other education assessed by the board as equivalent;
- (2) A bachelor level degree in a related technical program; or
- (3) A bachelor level degree in a non-related program or an associate level technical degree in surveying or related technical program.

In all cases, reference above to a degree in a related technical program shall be a degree having a program of study which includes basic courses in mathematics, physical science, and other subject areas related to surveying. The board will determine which programs are related technical programs and which are non-related programs.

Each applicant for licensure must complete at least 24 total semester credit hours of surveying education, which may consist of the successful completion of either surveying courses included in the degree program or surveying courses which were taken outside of and in addition to the degree program, or a combination of both. The surveying courses must be acquired from education institutions offering degrees as described above or as acceptable to the board. The surveying courses shall be unique in title and subject matter, and may not be duplicates of each other. The surveying courses shall range from basic principles of surveying through advanced applications of surveying, and shall include courses on the original public land survey system and boundary surveying. In the event all or a portion of the surveying education is earned as quarter credit hours, the equivalent education shall be based on equating one semester credit hour as being equal to one and one-half quarter credit hours.

Land surveying interns (LSIT or LSI) who have completed all of the requirements and who apply for licensure as a land surveyor prior to December 31, 2022, may apply for licensure under the licensing requirements that existed on January 1, 2011.

**20:38:30:04. Landscape architecture.** An applicant for licensure as a landscape architect shall have a professional degree in Landscape Architecture from a program accredited by the Landscape Architectural Accrediting Board (LAAB). A CLARB certification is required as evidence that the education requirement has been met.

**20:38:30:05. Petroleum release assessment.** An applicant for licensure as a Petroleum Release Assessor shall meet the following education requirement:

- (1) A bachelor level degree in engineering or related sciences; or
- (2) A high school diploma.

**20:38:30:06. Petroleum release remediation.** An applicant for licensure as a Petroleum Release Remediator shall meet the following education requirement:

- (1) A master or doctoral level degree in engineering or related sciences; or
- (2) A bachelor level degree in engineering or related sciences.

## **CHAPTER 20:38:31 EXPERIENCE REQUIREMENTS**

20:38:31:01	Experience required
20:38:31:02	Architecture
20:38:31:03	Engineering
20:38:31:04	Land surveying
20:38:31:05	Landscape architecture
20:38:31:06	Petroleum release assessment
20:38:31:07	Petroleum release remediation

**20:38:31:01. Experience required.** Experience is required in accordance with the provisions of this chapter. Experience credit may be granted for part-time and full-time work, but overtime will not be considered. The board may require as evidence of experience, exhibits of plans, specifications, and other technical submissions in the preparation of which the applicant participated, together with a statement from the licensed professional in responsible charge of the work attesting to the extent of the applicant's involvement. For land surveying applicants, experience prior to completion of education shall be in accordance with § 20:38:31:04. For other applicants, experience prior to completion of education may be granted experience credit at the rate of one-half year for each full year of experience, not to exceed one year total experience credit. Of this, no more than six months may be credited to any student for work experience gained during the summer breaks. Work experience under the direct supervision of a design professional licensed in a foreign country shall be evaluated by the board. Work experience credit gained in the armed services must be of a character equivalent to that which would have been gained in the civilian sector doing similar work, such as service in an architectural, engineering, or engineering-related group.

For an applicant with a degree from a foreign education program, experience must include a minimum of two years of qualifying experience gained in the United States. An applicant must be proficient in English.

**20:38:31:02. Architecture.** An applicant for licensure as an Architect shall have completed the NCARB Intern Development Program (IDP).

**20:38:31:03. Engineering.** An applicant for licensure as a Professional Engineer shall meet the following experience requirement:

- (1) three years of experience for an applicant meeting the education requirement described in § 20:38:30:02(1) and who has also obtained a master or doctoral level engineering degree;
- (2) four years of experience for an applicant meeting the education requirement described in § 20:38:30:02(1); or

- (3) five years of experience for an applicant meeting the education requirement described in §§ 20:38:30:02(2), (3), (4), or (5).

To qualify, experience must be completed under the direct supervision of a licensed professional engineer who is actively engaged in the practice of engineering. Experience must consist of employment or services that require the application of special knowledge of the mathematical, physical, and engineering sciences including the preparation and interpretation of engineering data.

Experience may include engineering supervision of construction, where the health, safety, or welfare of the public is involved but not the primary responsibility of the applicant. Such experience is acceptable whether the person who bore the responsibility for the work involved was the applicant or the applicant's supervisor in responsible charge.

Experience shall be reviewed by the board for conclusive evidence that the applicant has the ability to design and apply scientific principles independently and that the applicant's judgment may be trusted.

Experience of an intermittent engineering nature, such as sales-engineering assignments, combined engineering and miscellaneous office duties, or engineering assignments in which a large portion of the work is operational or maintenance, the board shall allow credit in the same proportion that the work which requires the application of engineering sciences and skills bears to the whole.

**20:38:31:04. Land surveying.** An applicant for licensure as a Land Surveyor shall meet the following experience requirement:

- (1) four years of experience, of which a minimum of two years shall be after earning the degree and a minimum of two years shall be after enrollment as a land surveying intern in accordance with § 20:38:32:04, for an applicant meeting the education requirement described in §§ 20:38:30:03(1) or (2); or
- (2) seven years of experience, of which a minimum of three years shall be after earning the degree and a minimum of two years shall be after enrollment as a land surveying intern in accordance with § 20:38:32:04, for an applicant meeting the education requirement described in § 20:38:30:03(3).

To qualify, land surveying experience must be completed under the direct supervision of a licensed professional land surveyor who is actively engaged in the practice of land surveying. Experience must consist of employment or services that require the application of special knowledge and technical skills acquired in the practice of land surveying as follows:

- (1) Correct determination and description of lands for conveyance or encumbrance;
- (2) Establishment or reestablishment of land boundaries;
- (3) Platting of lands in subdivisions;
- (4) Surveyed acquisition of data relative to the shape of the earth's surface and fixed objects thereon and therein for the purpose of presenting mapped information; and
- (5) Surveys necessary to plan for the alteration of the earth's surface or to create fixed works thereon.

Intermittent experience of a land surveying nature shall be credited in the same proportion that the work of a land surveying nature bears to the total experience period. Surveying experience normally identified with engineering projects, including design surveys for highways or bridges (except those that relate to right-of-way surveys), construction staking, curb and gutters, and sanitary sewers may be considered as part of the land surveying experience up to one-third of the minimum total required experience, since such experience can be considered basic to the development of the land surveyor.

Experience teaching land surveying courses in programs as described in § 20:38:30:03 may be granted experience credit up to a maximum of one year.

Land surveying interns (LSIT or LSI) who have completed all of the requirements and who apply for licensure as a land surveyor prior to December 31, 2022 may request that their application be reviewed on the basis of the experience and education requirements which existed on January 1, 2011.

**20:38:31:05. Landscape architecture.** An applicant for licensure as a Landscape Architect is required to have experience as determined by CLARB. The applicant's CLARB council record shall be provided to the board for evaluation and acceptance.

**20:38:31:06. Petroleum release assessment.** An applicant for licensure as a Petroleum Release Assessor shall meet the following experience requirement:

- (1) One year experience for an applicant meeting the education requirement described in § 20:38:30:05(1); or
- (2) Five years experience for an applicant meeting the education requirement described in § 20:38:30:05(2).

To qualify, experience must be gained under the direct supervision of a licensed professional and be related to site assessments, remedial investigations, and corrective actions necessary to remediate water or soil contaminated with petroleum.

**20:38:31:07. Petroleum release remediation.** An applicant for licensure as a Petroleum Release Remediator shall meet the following experience requirement:

- (1) Two years experience for an applicant meeting the education requirement described in § 20:38:30:06(1); or
- (2) Three years experience for an applicant meeting the education requirement described in § 20:38:30:06(2).

To qualify, experience must be gained under the direct supervision of a licensed professional and be related to site assessments, remedial investigations, and corrective actions necessary to remediate water or soil contaminated with petroleum.

## **CHAPTER 20:38:32 EXAMINATION REQUIREMENTS**

20:38:32:01	Examination required
20:38:32:02	Architecture
20:38:32:03	Engineering
20:38:32:04	Land surveying
20:38:32:05	Landscape architecture
20:38:32:06	Petroleum release assessment or remediation

**20:38:32:01. Examination required.** Examination is required in accordance with the provisions of this chapter. All applicants for admission to examination shall pay the required fee to the appropriate organization or vendor prior to admission to the examination. Examination vendors may be used to administer examinations. Policies and procedures of the examination vendor shall be followed in accordance with the vendor's agreement with the board. Examination results will be reported as either pass or fail, will be treated as confidential and will be transmitted only by U. S. mail to the examinee at the examinee's last known address.

Cheating or other violation of examination security provisions will result in automatic failure of the examination. No person may review any portion of any examination.

All applicants shall pass a take-home examination on South Dakota licensure laws prior to licensure.

An examinee seeking an accommodation for a disability shall make a request of the examination vendor with sufficient notice to enable arrangements for the accommodation.

**20:38:32:02. Architecture.** An applicant for licensure as an Architect shall pass the Architectural Registration Examination (ARE), which is prepared and scored by the NCARB.

An applicant may apply for admission to the examination upon satisfaction of the architecture education requirement.

An applicant who fails all or part of the examination may retake the examination as follows: An applicant that passes one or more divisions or sections of the examination will have five years to pass the remaining divisions. A passing grade for any division of the examination is valid for five years, after which time the division must be retaken if the remaining divisions have not been passed. The five year period begins on the date when the first passed division is administered. If an applicant fails to pass all divisions within five years, then the first passed division shall be retaken and the five year period begins on the date when the next oldest passed division is administered.

Effective January 1, 2012, the authorization to test of any applicant shall terminate unless the applicant has successfully passed a division of the ARE within a period of five years. This period includes the five years prior to January 1, 2012. Any applicant whose authorization is so terminated shall reapply for admission to the examination under the then current requirements.

**20:38:32:03. Engineering.** An applicant for licensure as a Professional Engineer shall pass the Fundamentals of Engineering (FE) examination and the Principles and Practice of Engineering (PE) examination, which are prepared and scored by NCEES.

An applicant who has satisfied the engineering education requirement or who is a senior within two semesters of graduating from an ABET accredited engineering program approved by the board may apply for admission to the FE examination. The applicant must have a transcript or senior status verification sent directly from the school to the board office as evidence of applicant's status. An applicant who passes the FE examination shall be enrolled as an engineer-in-training (EIT) or an engineering intern (EI). Passage of the FE examination does not authorize any person to practice as a professional engineer or to imply that such a professional title is held.

An applicant who has passed the FE examination and has satisfied the engineering education and experience requirements may apply for admission to the PE examination.

An applicant who fails the FE or PE examination may retake the examination two times. If the applicant fails the examination three times, the applicant may submit only one new application for admission to the examination per calendar year thereafter. The board may review an applicant who has failed the examination three times and may require additional qualifying education or experience.

**20:38:32:04. Land surveying.** An applicant for licensure as a land surveyor shall pass the Fundamentals of Land Surveying (FS) examination, the Principles and Practice of Land Surveying (PS) examination and an open book, take-home examination of South Dakota land surveying practice and laws.

Current students and graduates of the educational programs described in § 20:38:30:03 that have either successfully completed, or are currently enrolled in, a minimum total of 18 semester credit hours of surveying courses within, or in addition to, their program of study may apply for the FS examination. An applicant who passes the examination shall be enrolled as a land surveyor-in-training (LSIT) or land surveying intern (LSI). Passage of the examination does not authorize any person to practice as a land surveyor or to imply that such a professional title is held.

Applicants who have completed all of the requirements and who apply for the FS examination prior to December 31, 2015 may request that their application be reviewed on the basis of the education and experience requirements which existed on January 1, 2011.

An applicant who has passed the FS examination and has satisfied the land surveying education and experience requirements may apply for admission to the PS examination.

The South Dakota portion of the examination is an open book, take-home examination. There is a four-hour version for applicants who have passed 12 hours of the NCEES examinations; a two-hour version for applicants who have passed 14 hours of the NCEES examinations; and a one-hour version for applicants who have passed 15 hours of the NCEES examinations.

An applicant who fails the FS or PS examination may retake the examination two times. If the applicant fails the examination three times, the applicant may submit only one new application for admission to the examination per calendar year thereafter. The board may review an applicant who has failed the examination three times and may require additional qualifying education or experience.

**20:38:32:05. Landscape Architecture.** An applicant for licensure as a Landscape Architect shall pass the Landscape Architectural Registration Examination (LARE), which is prepared and scored by CLARB.

An applicant may apply for admission to the examination upon satisfaction of the landscape architecture education and experience requirements.

An applicant who fails to pass the first LARE examination may retake the examination two times. If the applicant fails the examination three times, the applicant may submit only one new application for admission to the examination per calendar year thereafter. The board may review an applicant who has failed the examination three times and may require additional qualifying education or experience.

**20:38:32:06. Petroleum release assessment or remediation.** An applicant for licensure as a petroleum release assessor or remediator shall pass the petroleum release examination, which is prepared and scored by the board. The examination is an open book, take-home examination over South Dakota procedures and rules pertaining to petroleum releases. A list of the procedures and rules and where they may be found is provided to each applicant with the examination.

An applicant may apply for admission to the examination upon satisfaction of the Petroleum Release education and experience requirements.

An applicant who fails the petroleum release examination may retake the examination two times. If an applicant fails the examination three times, the applicant may submit only one new application for



admission to the examination per calendar year thereafter. The board may review an applicant who fails the examination three times and may require additional qualifying education or experience.

## **CHAPTER 20:38:33 FEES AND PENALTIES**

20:38:33:01	Fee payments
20:38:33:02	Application fees
20:38:33:03	Examination fees
20:38:33:04	Renewal fees
20:38:33:05	Late renewal penalty
20:38:33:06	Reactivation fee
20:38:33:07	Reinstatement fees
20:38:33:08	Duplicate certificate fees
20:38:33:09	Returned check fee
20:38:33:10	Roster fee

**20:38:33:01. Fee payments.** Fees and penalties must be paid in full and are non-refundable.

**20:38:33:02. Application fees.** Application fees are as follows:

- (1) Application for licensure, \$100;
- (2) Application for admission to examination, \$100;
- (3) Application for business entity licensure, \$100;
- (4) Application for testing and licensure as a petroleum release assessor and remediator, \$150;
- (5) Application for upgrade from petroleum release assessor to remediator within one year, \$25;
- (6) Application for FS examination by an applicant who has met the education requirements to be eligible to take this examination, no fee; and
- (7) Application for FE exam by an applicant who is enrolled as a senior or is a graduate of an ABET engineering degree program or equivalent, no fee.

**20:38:33:03. Examination fees.** Certain examination fees are set by the examination vendor and are to be paid by the applicant directly to the vendor, as follows:

- (1) NCEES for engineering and land surveying examinations;
- (2) NCARB for architecture examinations; and
- (3) CLARB for landscape architectural examinations, except the applicant shall pay the fee for the graphic sections of the landscape architectural examination to the board. The fee is \$260 for Section C and \$260 for Section E of the landscape architectural examination.

The fee to retake the graphic landscape architectural examination is the same as the original examination fee.

The fee to retake the open book, take-home examination of South Dakota land surveying practice and laws shall be paid to the board pursuant to the following fee schedule:

- (1) 4 hour version of the take home exam, \$60;
- (2) 2 hour version of the take home exam, \$30; and
- (3) 1 hour version of the take home exam, \$20.

**20:38:33:04. Renewal fees.** Renewal fees are as follows:

- (1) Individual license, active status, \$80 biennially;
- (2) Individual license, inactive status, \$40 biennially;
- (3) Individual license, retired status, \$10 biennially; and
- (4) Business entity license, \$80 biennially.

**20:38:33:05. Late renewal penalty.** Late renewal penalties are as follows:

- (1) Individual license, \$100; and
- (2) Business entity license, \$100.

**20:38:33:06. Reactivation fee.** Reactivation of individual license from inactive status, \$80.

**20:38:33:07. Reinstatement fees.** The fees for reinstatement within three years after the date of expiration are as follows:

- (1) Individual license, \$180; and
- (2) Business entity, \$180.

**20:38:33:08. Duplicate certificate fees.** Duplicate certificate fees are as follows:

- (1) Intern, \$5;
- (2) Licensee, \$15; and
- (3) Business entity, \$15.

**20:38:33:09. Returned check fee.** An applicant who submits a check that is returned by a financial institution due to insufficient funds shall pay a returned check fee of \$30.

**20:38:33:10. Roster fee.** The fee for a list of current interns, individual licensees or business entity licensees is \$25 each.

## **CHAPTER 20:38:34**

### **COMITY LICENSURE REQUIREMENTS**

20:38:34:01	Comity licensure application
20:38:34:02	Education requirement
20:38:34:03	Experience requirement
20:38:34:04	Land surveying examination requirement
20:38:34:05	Application fees

**20:38:34:01. Comity licensure application.** An applicant licensed in another state or foreign country must be fully licensed by the board before offering to practice or practicing professional services within the state of South Dakota. An applicant for licensure through comity must comply with all application requirements set out in chapter 20:38:29.

The executive director shall request verification of licensure from the registration board in the state where the applicant passed a written examination. If licensure is not current in that state and examination verification cannot be obtained, the applicant shall provide evidence of continuous licensure in another state. If the applicant is licensed in the applicant's state of residence, the executive director shall request verification from that state board.

**20:38:34:02. Education requirement.** An applicant for licensure through comity shall meet the necessary education requirement as described in SDCL 36-18A-35.

**20:38:34:03. Experience requirement.** An applicant for licensure through comity shall meet the necessary experience requirement as described in SDCL 36-18A-35.

**20:38:34:04. Land surveying examination requirement.** An applicant for licensure through comity in land surveying shall pass the appropriate version of the open book, take-home examination of South Dakota land surveying practice and laws, depending upon the number of hours of NCEES examinations completed by the applicant, as described in § 20:38:32:04.

**20:38:34:05. Application fees.** An applicant for licensure through comity shall pay the necessary application fee as set out in § 20:38:33:02.

## **CHAPTER 20:38:35 CONTINUING PROFESSIONAL DEVELOPMENT**

20:38:35:01	Continuing professional development required for license renewal
20:38:35:02	Alternative continuing professional development option for architects
20:38:35:03	PDH sources
20:38:35:04	Multiple licenses
20:38:35:05	Reactivation
20:38:35:06	PDH credit
20:38:35:07	Record keeping
20:38:35:08	Exemptions
20:38:35:09	Audits
20:38:35:10	Compliance

**20:38:35:01. Continuing professional development required for license renewal.** Unless exempted, all individual licensees are required to obtain a minimum of 30 Professional Development Hours (PDH) during the biennium preceding license renewal. PDH credit must be obtained in a qualifying professional development activity, including courses or activities with clear purposes and objective which maintain, improve, or expand the licensee's skills and knowledge relevant to the licensee's field of practice.

Of the required 30 PDH, a minimum of 20 PDH must be in technical subjects that lead to further professional development in the licensee's field of practice. Technical subjects include design; environmental analysis; programming and planning; structural systems; lateral forces; mechanical, electrical, plumbing, and acoustical systems; construction methods; construction observation; site and soils analyses and design; accessibility; building codes; selection of building materials; and land survey. Of the required 30 PDH, a maximum of 10 PDH may be in professional management subjects such as total quality management, professional business practice, or ethics.

If the 30 PDH minimum is exceeded in any biennium, up to 15 hours in excess of the 30 minimum hours may be carried forward and credited toward the requirement for the next biennium.

By submitting an application for license renewal, the licensee certifies, under penalty of perjury, that all information submitted by the licensee in the application, including continuing professional development information, is true and correct.

If notified by the board of an audit, a licensee must supply sufficient additional information to permit verification that the continuing professional development requirement has been met.

**20:38:35:02. Alternative continuing professional development option for architects.** As an alternative to the requirements of § 20:38:35:01, a licensed architect may meet the continued professional development requirement for renewal by obtaining 12 Continuing Education Hours (CEH) per calendar year. CEH shall be in health, safety, and welfare subjects acquired in structured educational activities. For the purposes of this section, CEH is 50 to 60 minutes of continuous instructional contact in structured educational activities intended to increase or update the licensee's knowledge and competence in health, safety, and welfare subjects.

For purposes of this section, a structured educational activity is one in which 75 percent of the activity's content and instructional time is devoted to health, safety, and welfare subjects related to the practice of architecture. The activity shall be provided by a qualified individual or organization and can be delivered by direct contact or distance learning methods.

For purposes of this section, health, safety, and welfare subjects are those that the board deems appropriate to safeguard the public in the following areas of practice:

- (1) Building systems: communications, electrical, fire protection, mechanical, plumbing, security, and structural;
- (2) Construction contract administration: bidding, contract negotiations, and contracts;
- (3) Construction documents: delivery methods, drawings, and specifications;
- (4) Design: building design, interiors, master planning, safety and security measures, site design, and urban planning;
- (5) Environmental: energy efficiency, hazardous materials, insulations, natural hazards, natural resources, sustainability, and weatherproofing;
- (6) Legal: accessibility, codes, ethics, insurance to protect owners and public, laws, life safety, regulations, standards, and zoning;
- (7) Materials and methods: construction systems, equipment, finishes, furnishings, and products;
- (8) Pre-design: land use analysis, programming, site and soils analysis, site selection, and surveying; and
- (9) Preservation: adaptation, historic, and reuse.

**20:38:35:03. PDH sources.** PDH sources are as follows:

- (1) College courses, completed with passing grades;
- (2) Continuing education courses, completed with passing grades;
- (3) Correspondence, televised, videotaped, audiotaped, Internet, and other short courses or tutorials if such activities include testing completed with verifiable passing scores;
- (4) Qualifying professional or technical seminars, in-house courses, or workshops;
- (5) Presenting, teaching, or instructing in the qualifying activities listed in subdivision (1) to (4), inclusive, of this section;
- (6) Writing of published papers, articles, or books;
- (7) Active participation in professional or technical societies;
- (8) Patents; and
- (9) Self-study activities, including Internet courses, books, or articles, or video/audio tapes, if such activities include testing or examination with formal, recorded passing scores.

Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to part-time or full-time faculty.

**20:38:35:04. Multiple licenses.** A person licensed in more than one profession regulated by the board must obtain a combined total of 30 PDH biennially, at least one-third of which must be obtained in each profession.

**20:38:35:05. Reactivation.** A former licensee seeking reactivation of an expired license within three years of expiration must obtain a minimum of all delinquent PDH for the inactive years up to a maximum of 30 PDH. A former multiple licensee must obtain a minimum of 30 PDH, at least ten of which must be obtained in each profession. For reinstatement purposes, the expiration date of licensure for additional professions shall be the same expiration date as that for the first profession. A person maintaining inactive status and seeking reactivation must earn 15 PDH for each year exempted before returning to active practice, up to a maximum of 30 PDH.

**20:38:35:06. PDH credit.** The board is the final authority for approval of PDH credit. The board may not pre-approve courses or providers for PDH credit. PDH credit is determined as follows:

- (1) One college semester hour, 45 PDH;
- (2) One college quarter hour, 30 PDH;
- (3) One continuing education unit (CEU), 10 PDH;
- (4) Program time of professional development course work or seminars as follows:

<u>Program Time</u>	<u>PDH Credit</u>
0 to 29 minutes	no credit
30 to 49 minutes	0.5 PDH
50 to 79 minutes	1.0 PDH
80 to 109 minutes	1.5 PDH
Greater than 109 minutes	Actual time rounded to the nearest half hour;

- (5) One hour of presenting, teaching or instructing, 2 PDH;
- (6) Each published paper, article, or book, 10 PDH;
- (7) Active participation in each professional organization or technical society, 2 PDH per organization per biennial renewal period, maximum 6 PDH per biennial renewal period; and
- (8) Each patent, 10 PDH.

**20:38:35:07. Record keeping.** A licensee shall maintain records to support professional development credits claimed. Records sufficient for audit purposes must be maintained for a minimum of three years after the date of renewal. The records shall include the PDH credits earned in the biennium prior to the date of renewal and, in the case of carryover PDH credit, shall include the years when the carryover PDH was earned. A licensee shall keep the following records:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credit earned;
- (2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance; or
- (3) Records as maintained by professional record repositories, such as the American Institute of Architects (AIA), the Professional Development Registry for Engineers and Surveyors (PDRES), or Council of Landscape Architectural Registration Boards (CLARB).

**20:38:35:08. Exemptions.** A licensee may be temporarily exempted from continuing professional development requirements as follows:

- (1) A licensee serving on temporary active duty in the armed forces of the United States for more than 120 consecutive days in the biennium prior to renewal is exempt from the continuing professional development requirement for that biennium. Supporting documentation must be furnished to the board;
- (2) A licensee experiencing physical disability, illness, or other extenuating circumstances in the last six months of the biennium prior to renewal may be exempt from the professional development requirement for that biennium. Supporting documentation must be furnished to the board;
- (3) A licensee maintaining inactive or retired status, subject to the provisions of this chapter.

**20:38:35:09. Audits.** The board may select a random sample of license renewals to audit for compliance. Each licensee selected for audit shall submit detailed information and documentation for the PDH credit claimed. The board may also audit based on complaints or charges against a licensee. Failure to respond within 30 days of an audit notification or other request for information may result in disciplinary action. Falsification of documentation is grounds for disciplinary action.

**20:38:35:10. Compliance.** If an audit indicates a failure to comply with the professional development requirements, the licensee will have 90 calendar days after receipt of written notice to further reinforce the claim of PDH credits or to acquire sufficient PDH credit to meet the requirements. The board may take into consideration hardship or extenuating circumstances in allowing correction of deficiencies, but the deadline may not be extended by more than one year.

## **CHAPTER 20:38:36**

### **RULES OF PROFESSIONAL CONDUCT**

20:38:36:01 Professional conduct

**20:38:36:01. Professional conduct.** To establish and maintain a high standard of integrity, skill, and practice in the professions and to safeguard the life, health, safety, welfare, and property of the public, the following rules of professional conduct are binding upon each person holding a license and on all business entities authorized to offer or perform professional services under this article. Noncompliance with any of the rules of professional conduct can result in disciplinary actions. Licensees shall comply with the following rules of professional conduct:

- (1) Licensees shall maintain interest in the public welfare and be ready to apply their special knowledge, skill, and training for the use and benefit of the public;
- (2) Licensees shall be cognizant that their first and foremost responsibility is to the public welfare in the performance of services to clients and employers;
- (3) Licensees may not associate with or allow the use of their name in connection with any enterprise, person, or firm of questionable character such as engaging in fraudulent or dishonest business or professional practices;
- (4) Licensees shall carry on professional work in a spirit of fairness to all concerned, fidelity to clients and employers, and loyalty to country and shall be devoted to high ideals of courtesy and personal honor;
- (5) Licensees shall act with reasonable care and competence and shall apply the technical knowledge and skill which are ordinarily applied by other professionals of good standing who are practicing in this state;
- (6) Licensees shall regard as confidential any information obtained about the business affairs and technical methods or processes of a client or employer;
- (7) Professionals shall accurately represent to a prospective or existing client or employer their qualifications and the scope of their responsibility in connection with work for which they are claiming credit;
- (8) Licensees shall inform a client or employer of any business connections, interests, or affiliations that might influence their judgment or impair the disinterested quality of their services. If the client or employer objects to such business connection, interest or affiliation, the licensee shall either terminate the business connection, interest or affiliation, or offer to give up the employment;
- (9) Licensees shall accept financial or other compensation for a particular service from one source only unless there is full disclosure and the consent of all interested parties;

- (10) Licensees shall comply with the licensure laws and rules governing their professional practice in any United States jurisdiction;
- (11) Licensees shall approve and seal only those documents and submissions that conform to accepted architectural, engineering, landscape architectural, land surveying, or petroleum release standards and safeguard the life, health, safety, welfare, and property of the public;
- (12) Licensees shall confine professional services to the profession and technical field in which they are licensed and competently qualified;
- (13) Licensees shall undertake to perform professional services only when they, together with those whom they may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved. If a question arises about the competence of a licensee to perform an assignment in a specific technical field which cannot be otherwise resolved to the board's satisfaction, the board may require the licensee to submit to an examination in the technical field as specified by the board;
- (14) Licensees may not seal plans or other documents for the preparation of which they were not in direct responsible charge or that deal with subject matter in which they lack competence;
- (15) Licensees may not directly or indirectly use or make use of for their own benefit any property, facility, or services of their client or employer unless prior authority is obtained;
- (16) Licensees shall cooperate with architectural, engineering, landscape architecture, land surveying, and petroleum release agencies in advancing those professions;
- (17) Licensees may not engage in any discriminatory practices prohibited by law in the employment of personnel and in the conduct of business;
- (18) Licensees may not solicit or accept compensation from material or equipment suppliers for specifying their products;
- (19) Licensees may not solicit or accept compensation, directly or indirectly, from contractors, their agents, or other parties not under contract in connection with work for clients or employers for which they are responsible;
- (20) Licensees may not offer to pay, directly or indirectly, a commission, political contribution, gift, or other compensation in order to secure work, exclusive of payment made to an employment agency for its services;
- (21) Licensees shall take into account all applicable state and municipal laws, ordinances, and regulations and may not knowingly execute a project in violation of them;
- (22) In the course of work on a project, if a licensee becomes aware of an action taken by the client or employer against the licensee's advice, which violates applicable state or municipal laws and regulations and which will, in the licensee's judgment, adversely affect the life, health, safety, welfare and property of the public, the licensee shall take the following actions:
  - (a) Advise the client or employer in writing of the licensee's refusal to consent to the decision and give reasons for that refusal;
  - (b) If the licensee's advice is ignored despite the objection, terminate the licensee's services to the project; and
  - (c) Provide a copy of the licensee's objection and reasoning to the public official charged with the enforcement of the applicable state or municipal laws and regulations;
- (23) Licensees shall indicate any reservation on a reference for an applicant if they have reason to believe the applicant is unqualified by education, training, or experience to become licensed. The licensee's opinion shall be based on the qualifications that a reasonable and prudent professional would require an applicant to possess;
- (24) Licensees may accept an assignment for coordination of an entire project if each design segment is signed and sealed by the licensee responsible for preparation of that design segment;
- (25) Licensees shall be completely objective and truthful in all professional reports, statements, or testimony and shall include all relevant and pertinent information in those reports, statements, or testimony;

- (26) Licensees may express a professional opinion publicly only if it is founded upon adequate knowledge of the facts at issue, upon background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of the licensee's testimony if serving as an expert or technical witness;
- (27) Licensees making public statements on professional questions shall disclose if the licensee is being compensated for making such statements;
- (28) Licensees shall make decisions impartially when acting as an interpreter of construction contract documents and a judge of contract performance, favoring neither party to the contract;
- (29) Licensees who are aware of the violation of any of the rules of professional conduct by another licensee shall report the violation to the board for investigation;
- (30) Licensees maintaining an office in South Dakota shall have a licensee regularly employed and scheduled in that office who is in direct responsible charge of the professional work;
- (31) Licensees may not engage in conduct involving fraud or disregard of the rights of others;
- (32) Licensees are bound by and shall comply with all provisions relating to their profession and technical field contained in SDCL chapter 36-18A and this article;
- (33) Licensees must notify the board within 30 days if another state has disciplined them with a reprimand, censure, suspension, temporary suspension, probation, revocation, or refusal to renew a license; and
- (34) Licensees shall respond within 30 days of an audit notification.

## **CHAPTER 20:38:37 OTHER REQUIREMENTS OF LICENSEES**

20:38:37:01	Seals
20:38:37:02	Prime professional
20:38:37:03	Construction administration services
20:38:37:04	Combining architecture, engineering, and construction services
20:38:37:05	Land surveyors
20:38:37:06	Performing services on exempt projects or for exempt entities
20:38:37:07	Petroleum release samples

**20:38:37:01. Seals.** A licensed professional engineer, architect, land surveyor, or landscape architect is responsible for the security and proper use of an appropriate seal. No petroleum release assessor, petroleum release remediator, or intern may obtain or use a seal. Improper use of the seal is grounds for disciplinary action. The seal shall be used on all final documents, including plats, reports, plans, specifications, and construction administration. Failure to sign and seal any final work product constitutes a violation and shall be handled as a disciplinary action. The seal implies responsibility for the entire submission unless the area of responsibility is clearly identified in the information accompanying the seal. Drawings prepared by licensed professional consultants, such as structural, mechanical, or electrical engineers, shall have the seal and license number of the consultant in responsible charge on each sheet of those drawings. Any exempt project services performed by a licensed professional shall be sealed. Review drafts or presentation documents, such as renderings or drawings used to communicate conceptual information only, are not required to be signed and sealed.

**20:38:37:02. Prime professional.** The prime professional is the licensed architect or professional engineer who leads the design team and manages the design project. A prime professional is required for any project that requires multiple disciplines, such as, architectural, landscape architectural, civil, structural, mechanical, or electrical engineering. The prime professional is charged with the coordination of the design and construction administration services. The prime professional may require testing and



uncovering of work to determine compliance with approved plans and specifications. The duties of the prime professional include the following:

- (1) Acts as point of contact for the project team during the design phase to ensure dialogue among participants, including owners, contractors, developers, design professionals, government bodies, and building officials;
- (2) Verifies that the submittal to the building official is compatible and coordinated and provides a logical and comprehensive document;
- (3) Verifies that the design submitted is complete, and that all requirements for calculations and specifications are complete and accurately delineated on plans and related documents;
- (4) Acts as point of contact during the review process with the building official and provides for timely response to questions, corrections, or requests for additional information on any element of the design package;
- (5) Acts as point of contact for the design team following permit issuance, responds to changes, clarifications, and additional information that may be required from members of the design team to owners, developers, contractors, or building officials; and
- (6) Coordinates construction administration services.

**20:38:37:03. Construction administration services.** Construction administration services shall be provided by a licensee practicing within the licensee's profession and comprise the following minimum services:

- (1) Visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the contract documents and technical submissions;
- (2) Processing shop drawings, samples, and other submittals required of the contractor by the terms of construction contract documents to assure general accordance with the plans and specifications; and
- (3) Notifying the owner, the client, the board, and the building official of any observed and uncorrected code violations; changes that affect code compliance; the use of any materials, assemblies, components, or equipment prohibited by a code; major or substantial changes between such technical submissions and the work in progress; or any deviation from the technical submissions that the design professional identifies as constituting a hazard to the public, which is observed in the course of performing the professional's construction administration duties.

The project's architect or professional engineer shall report to the board and the building official if neither one is engaged to provide construction administration services.

**20:38:37:04. Combining architecture, engineering, and construction services.** A business entity offering any combination of architectural and engineering services together with construction services such as design-build contracting, may offer to render architectural and engineering services only if:

- (1) An architect and professional engineer licensed in the state participates substantially in all material aspects of the offering;
- (2) There is written disclosure at the time of the offering that the architect and professional engineer are engaged by and contractually responsible to the contractor, contractor as a joint venture, or owner/client;
- (3) The architect and professional engineer will have direct supervision of the design work and that the professional services are not terminated without the consent of the owner/client;
- (4) The rendering of architectural and engineering services by such professionals will conform to the provisions of SDCL chapter 36-18A and this article; and
- (5) Design professionals perform construction administration on the projects.

**20:38:37:05. Land surveyors.** A licensed land surveyor shall perform the following services:

- (1) Filing certified land corner records. On certified land corner records, a licensed surveyor shall date, sign and affix the licensed surveyor's number and seal on 8½ by 14-inch sheets before presenting a certificate for filing. The certified land record form shall show by sketch and explanation a complete description of the found or reestablished corner monument. The accessories established, stating how marked, material used, witness trees, witness objects, bearing objects, and courses and distances to adjacent corners if determined in reestablishing the corner described shall be on the certificate. The licensed surveyor shall describe evidence found of the original corner and give the original record if known. The licensed land surveyor may include other reference information such as State Plane Coordinates or other specified geodetic coordinates as evidence of the corner position. The licensed land surveyor may use the back of the certificate for additional sketches;
- (2) File with the register of deeds. The certified land corner shall be indexed by the register of deeds in each county on a township index sheet provided by the board. Counties using microfilm or similar devices for storage of documents shall return the original to the land surveyor unless notified otherwise; and
- (3) Survey corner markers. All corner markers including points of curvature set by licensed land surveyors, whether they are retracement surveys, aliquot boundaries, or the subdivision of lands, must either be constructed of ferrous metal or must contain sufficient magnetic material so that the markers can be found with metal detecting devices. All corner markers set by licensed land surveyors must have affixed to the top of the corner marker a device commonly known as a survey cap which clearly shows the registration number of the surveyor.

**20:38:37:06. Services on exempt projects or for exempt entities.** Any licensed professional architect, engineer, landscape architect, or land surveyor in South Dakota performing services on an exempt project or for an exempt governmental entity, pursuant to SDCL 36-18A-9, shall, in the performance of such professional services, comply with all applicable provisions of state law and administrative rules in the performance of such services. The professional standard of care for a licensee, and the mandatory compliance with state statutes and administrative regulations, are not reduced, modified, or lessened when the project is exempt.

**20:38:37:07. Petroleum release samples.** A petroleum release assessor or remediator shall gather assessment samples to determine if there is a petroleum release and shall direct soil borings and determine where to collect samples for analytical data.

## **CHAPTER 20:38:38 FIRE PROTECTION SYSTEMS**

20:38:38:01	Automatic fire sprinkler and fire alarm systems
20:38:38:02	Shop drawings for fire sprinkler system
20:38:38:03	Qualified fire sprinkler system technician
20:38:38:04	Shop drawings for fire alarm system
20:38:38:05	Qualified fire alarm system technician
20:38:38:06	Exempt projects and routine maintenance

**20:38:38:01. Automatic fire sprinkler and fire alarm systems.** If fire sprinkler or fire alarm shop drawings are to be used to finalize engineering concepts, a licensed professional engineer shall provide and be responsible for the design concept and specifications, which must be adequate for shop drawing preparation by others. The licensed professional engineer shall review the shop drawings of the system

prior to its permit review and installation. In addition, the licensed professional engineer shall provide a review stamp or letter of review attached to the drawings.

After installation of the fire sprinkler system and fire alarm system, the licensee shall furnish a written letter stating the system has been installed in accordance with the shop drawings and tested in accordance with the manufacturer's specifications and the appropriate National Fire Protection Association requirements. This acceptance letter shall be made available to appropriate jurisdictional authorities and interested parties.

**20:38:38:02. Shop drawings for fire sprinkler system.** A properly qualified technician or licensee shall execute the design concept and prepare shop drawings for a fire sprinkler system.

**20:38:38:03. Qualified fire sprinkler system technician.** A qualified fire sprinkler system technician is a person who has at least one of the following qualifications:

- (1) A National Institute for Certification in Engineering Technologies (NICET) level III technician certifications in the subfield of fire sprinkler systems;
- (2) A NICET level IV technician certification in the subfield of fire sprinkler systems; or
- (3) 20 years of experience in the field of fire sprinkler system layout.

**20:38:38:04. Shop drawings for fire alarm system.** A properly qualified technician or licensee shall execute the design concept and prepare shop drawings for any fire alarm system.

**20:38:38:05. Qualified fire alarm system technician.** A qualified fire alarm system technician is a person who has at least one of the following qualifications in fire alarm systems:

- (1) A National Institute for Certification in Engineering Technologies (NICET) level III technician certification in the subfield of fire alarm systems;
- (2) A NICET level IV technician certification in the subfield of fire alarm systems; or
- (3) 20 years of experience in the field of fire alarm systems layout.

**20:38:38:06. Exempt projects and routine maintenance.** A licensee may not be required to provide design concepts or an acceptance letter of review for:

- (1) Projects exempt from building code requirements for fire protection; or
- (2) Routine maintenance, when accomplished in accordance with National Fire Protection Association (NFPA) standard #25, "Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems."

## **CHAPTER 20:38:39 DISCIPLINARY PROCEEDINGS**

20:38:39:01	Complaints
20:38:39:02	Complaint procedure
20:38:39:03	Informal disposition of complaints
20:38:39:04	Formal proceedings
20:38:39:05	Contents of a formal board complaint
20:38:39:06	Answer to formal board complaint
20:38:39:07	Disqualification
20:38:39:08	Procedure for formal hearing
20:38:39:09	Final action by board
20:38:39:10	Petition for hearing by an aggrieved person
20:38:39:11	Petition for declaratory ruling

20:38:39:12 Board action on petition  
20:38:39:13 Adverse ruling

**20:38:39:01. Complaints.** Any person, board member or the executive director of the board, claiming that a licensee or an applicant for licensure under SDCL chapter 36-18A has engaged in or is engaged in conduct constituting grounds for disciplinary action as enumerated in SDCL chapter 36-18A or chapter 20:38:36 may file with the board a written complaint. The board may require the complaining party to file a complaint verified on oath stating the name of the applicant or licensee against whom the complaint is made and setting out full details of the conduct which is alleged to be a violation. Failure to file a written complaint, verified under oath, in the form satisfactory to the board, is a basis to dismiss the complaint. On receipt of a complaint deemed to be in proper form by the board or the executive director, the complaint shall be served by mail upon the applicant or licensee complained against and upon any other affected parties, together with a copy of chapter 20:38:36.

The applicant or licensee complained against shall respond to the complaint within 20 calendar days after service of the complaint on the applicant or licensee. The response of the applicant or licensee shall be sent to the executive director of the board at the board's office. Upon receipt of the response of the applicant or licensee, or upon expiration of the time for the applicant or licensee complained against to respond, the chair of the board, considering only the complaint and any response, shall appoint one member of the board who, along with the executive director and such other individuals as may be appointed by the chair of the board, to act as an investigative committee to determine if the complaint has merit and constitutes grounds for disciplinary action, or lacks merit and should be dismissed.

**20:38:39:02. Complaint procedure.** Upon completion of the investigation, the investigating committee shall recommend to the board whether the charges should be dismissed for lack of merit or whether based upon the investigation of the committee there is sufficient basis to proceed with either a formal hearing or other disposition. The failure of a licensee to comply with the investigation request administered by the board may result in disciplinary action. The board may also petition the court of the county in which the individual licensee resides, and the court may enter an order compelling the compliance or imposing such terms and conditions as the court may deem necessary.

**20:38:39:03. Informal disposition of complaints.** The board may accept an assurance of voluntary compliance or a consent order regarding a violation of SDCL chapter 36-18A or chapter 20:38:36. The assurance or consent order shall be in writing and is subject to the approval of the board. The assurance or consent order may include a statement that the individual will not engage in such act or practice in the future and one of the following:

- (1) Stipulation for voluntary payment of any fine or cost, or both, of the investigation; and
- (2) Stipulation for the voluntary payment necessary to restore to any person money or property which may have been acquired by the alleged violator.

The assurance of voluntary compliance may not be considered an admission to a violation for any purpose. The consent of the licensee to a consent order shall constitute an admission of a violation for any purpose. Proof of the failure to comply with an assurance of voluntary compliance or a consent order shall entitle the board to institute or reinstitute formal proceedings.

The board shall notify in writing any complaining party, the applicant or licensee complained against, and any other affected parties of the results of the informal disposition of a complaint and the action taken, if any. Informal disposition of a complaint is a public record.

**20:38:39:04. Formal proceedings.** If an alleged violation has merit constituting grounds for disciplinary action, the board may commence formal proceedings. Formal proceedings shall be instituted by a formal board complaint and service of a notice of hearing by mail upon the applicant or licensee complained against.

**20:38:39:05. Contents of a formal board complaint.** The formal board complaint shall include the name of the applicant or licensee complained against, a statement setting forth the nature of the violations being charged that constitute grounds for disciplinary action.

**20:38:39:06. Answer to formal board complaint.** The applicant or licensee shall file an answer within 20 calendar days after service of the complaint admitting, denying, qualifying, or explaining all facts alleged in the formal complaint and all defenses of the applicant or licensee or mitigating factors. The licensee shall file the original upon the executive director of the board and a copy by mail to the board counsel.

**20:38:39:07. Disqualification.** If an alleged violation against an applicant or licensee is filed by a board member, or if a board member participates in the investigation of a violation by an applicant or licensee, that board member is disqualified from sitting at the hearing as a board member and from participating in the decision rendered by the board.

**20:38:39:08. Procedure for formal hearing.** The following procedure shall be used by the board in conducting formal hearings:

- (1) The board shall provide written notice to the applicant or licensee by mail stating the time, place, and date of the formal hearing. The notice shall require the attendance of the applicant or licensee at the hearing. The notice shall be given at least ten days prior to the formal hearing;
- (2) A transcript shall be kept of all formal hearings and proceedings;
- (3) The board chairman may conduct the formal proceeding or the board may have a hearing examiner conduct the proceedings in part or in full;
- (4) The applicant or licensee appearing before the board at a formal hearing shall appear in person, unless otherwise waived by the board. The applicant or licensee, and his legal counsel, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the party's interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence on the party's behalf.

**20:38:39:09. Final action by board.** After a formal hearing, the board may dismiss the formal complaint or issue an order seeking any disciplinary remedy enumerated in SDCL 36-18A-57 and 36-18A-67. The board's decision shall be made and entered with notice of the decision given in accordance with the provisions of SDCL 1-26-23 to 1-26-25, inclusive.

**20:38:39:10. Petition for hearing by an aggrieved person.** In a contested case, as defined in SDCL 1-26-1(2), including disciplinary proceedings, a person aggrieved by an action of the board taken without a hearing may, within 30 days following the date of the board action, petition the board for a hearing. The hearing shall be held at the earliest convenience of the board following receipt of the petition. Twenty days before the date set by the board for hearing, the board shall serve by mail upon the petitioner and other interested or affected parties a copy of the notice of hearing and a copy of the aggrieved person's petition.

**20:38:39:11. Petition for declaratory ruling.** A person seeking a ruling as to the applicability to that person of a statutory provision or rule or order of the board may file with the board a Petition for Declaratory Ruling in substantially the following form:

Pursuant to the provisions of SDCL 1-26-15, I, (name of petitioner), of (address of petitioner), am (title or capacity of petitioner), and do hereby petition the Board of Technical Professions for its declaratory ruling in regard to the following:

- (1) The statute or rule or order in question is: (here identify and quote the pertinent statute, rule, or order.)
- (2) The facts and circumstances that give rise to the issue to be answered by the board's declaratory ruling:
- (3) The precise issue to be answered by the board's declaratory ruling:

Dated at (city and state), this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Petitioner

**20:38:39:12. Board action on petition.** Upon receipt of the petition, the board may request from the petitioner any information that may be required for the issuance of its ruling. Within 30 days following the receipt of the petition, or within 30 days following receipt of requested information, the board shall issue its declaratory ruling and serve a copy of it by mail upon the petitioner.

**20:38:39:13. Adverse ruling.** Any person seeking a declaratory ruling hereunder, is deemed to be aggrieved, in an issue that constitutes a contested case as defined in SDCL 1-26-1(2) made within 30 days of the board's declaratory ruling requests the board for a formal hearing, which hearing shall be held at the earliest convenience of the board following the receipt of the request.